

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2012 Supplement

Including Acts of the 2011 Extraordinary Session and the 2012  
Regular Session of the General Assembly

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*Prepared by*

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The Office of Legislative Counsel

*and*

The Editorial Staff of LexisNexis®



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## THIS SUPPLEMENT CONTAINS

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

**Indices:**

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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# TITLE 21

## ELECTIONS

Chap.

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2. Elections and Primaries Generally, 21-2-1 through 21-2-603.
5. Ethics in Government, 21-5-1 through 21-5-76.

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### CHAPTER 1

#### CONGRESSIONAL DISTRICTS

Sec.		Sec.	
21-1-1.	Definitions and descriptions for use in designating congressional districts [Repealed].		missal, or appointment of members of constitutional or statutory boards or bodies for which membership based on residency within congressional district.
21-1-2.	Designation of congressional districts.		
21-1-3.	Continuation in office, dis-		

#### **21-1-1. Definitions and descriptions for use in designating congressional districts.**

Reserved. Repealed by Ga. L. 2011, Ex. Sess., p. 208, § 3/HB 20EX, effective September 6, 2011.

**Editor's notes.** — This Code section was based on Code 1933, § 34-1801, enacted by Ga. L. 1971, Ex. Sess., p. 89, § 1; Code 1933, § 34-1802, enacted by Ga. L. 1981, Ex. Sess., p. 131, § 1; Code 1981, § 21-2-3; Ga. L. 1991, Ex. Sess., p. 92, § 1; Ga. L. 1992, p. 335, § 1; Ga. L. 1992, p. 833, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1998, p. 295, § 1; Code 1981, § 21-1-1, as redesignated Ga. L. 2001, Ex. Sess., p. 335, §§ 1, 4.

Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

#### **21-1-2. Designation of congressional districts.**

The General Assembly shall by general law divide the state into 14 congressional districts. There shall be elected one representative to the Congress of the United States from each such district by the electors of such district. (Code 1981, § 21-1-2, enacted by Ga. L. 2011, Ex. Sess., p. 208, § 4/HB 20EX.)

**Effective date.** — This Code section became effective September 6, 2011.

**Editor's notes.** — This Code section formerly pertained to designation of congressional districts. The former Code section was based on Orig. Code 1863, § 44; Code 1868, § 42; Ga. L. 1872, p. 12, § 1; Code 1873, § 40; Code 1882, § 40; Ga. L. 1890-91, p. 193, §§ 1-3; Civil Code 1895, § 31; Ga. L. 1905, p. 52, § 2; Ga. L. 1905, p. 54, § 2; Ga. L. 1905, p. 55, § 2; Ga. L. 1905, p. 57, § 2; Ga. L. 1905, p. 58, § 2; Ga. L. 1905, p. 60, § 2; Ga. L. 1905, p. 62, § 1; Ga. L. 1905, p. 63, § 2; Civil Code 1910, § 33; Ga. L. 1911, p. 146, § 1; Ga. L. 1912, p. 38, § 1; Ga. L. 1912, p. 41, § 1; Ga. L. 1912, p. 108, § 1; Ga. L. 1914, p. 23, § 2; Ga. L. 1914, p. 27, § 1; Ga. L. 1914, p. 29, § 1; Ga. L. 1914, p. 33, § 1; Ga. L. 1916, p. 17, § 1; Ga. L. 1917, p. 41, § 1; Ga. L. 1917, p. 44, § 1; Ga. L. 1918, p. 102, § 1; Ga. L. 1918, p. 106, § 1; Ga. L. 1919, p. 68, § 1; Ga. L. 1920, p. 34, § 1; Ga. L. 1920, p. 38, § 1; Ga. L. 1920, p. 48, § 1; Ga. L. 1920, p. 52, § 1; Ga. L. 1921, p. 88, § 1; Ga. L. 1924, p. 39, § 1; Ga. L. 1931, p. 46, §§ 1, 2; Code 1933, § 34-2301; Ga. L.

1964, p. 478, § 1; Code 1933, § 34-1801, enacted by Ga. L. 1971, Ex. Sess., p. 89, § 1; Ga. L. 1972, p. 235, § 1; Ga. L. 1981, Ex. Sess., p. 131, § 1; Code 1981, § 21-2-4; Ga. L. 1991, Ex. Sess., p. 92, § 2; Ga. L. 1992, p. 335, § 2; Ga. L. 1992, p. 833, § 2; Ga. L. 1993, p. 863, § 1; Code 1981, § 21-1-2, as redesignated by Ga. L. 2001, Ex. Sess., p. 335, §§ 2-4; Ga. L. 2005, p. 728, §§ 1, 2/HB 499 and was repealed by Ga. L. 2011, Ex. Sess., p. 208, § 4/HB 20EX, effective September 6, 2011.

Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

Ga. L. 2011, Ex. Sess., p. 208, § 2/HB 20EX and the attachment thereto identified as "Plan: congprop2 Plan Type: Congress Administrator: H167 User: Gina", not codified by the General Assembly, contains the description of the congressional districts and related definitions, effectiveness, and applicability provisions.

### **21-1-3. Continuation in office, dismissal, or appointment of members of constitutional or statutory boards or bodies for which membership based on residency within congressional district.**

(a) Any member of any constitutional or statutory board or body who:

(1) Is in office on January 1 of the year following the year in which members of Congress are first elected from Georgia under any congressional redistricting Act; and

(2) Was appointed or otherwise selected (other than by election by the people) on the basis of residency within a congressional district

shall have his or her eligibility or ineligibility to continue to serve determined as provided in this subsection. Such member shall serve out the term for which the member was appointed and shall represent the congressional district in which the member resides unless more members of the board or body than authorized by the applicable constitutional provision or statute reside within the same congressional district. In the event any congressional district in which there are residing therein more members of any such board or body than the number of members specified by the applicable constitutional provision or statute, the appointing authority shall designate which member or members

representing the congressional district shall continue to serve as a member or members of the board or body. Any member not designated for continued membership shall cease to hold office as of the date of such designation by the appointing authority. If a congressional district is not represented on a board or body as specified by the applicable constitutional provision or statute, a vacancy shall exist. Such vacancy shall be filled by the appointing authority appointing to the board or body a member or members from the congressional district which does not have sufficient representation. In the case of an appointment to fill a vacancy created by the displacement of a member from a congressional district on the basis of residency, the initial appointment shall be for a term ending on the date on which the term of the member removed by the appointing authority in accordance with the foregoing requirement would have ended. The initial term of all other appointments to fill a vacancy as provided for in this Code section shall be set by the appointing authority in accordance with the schedule of expiration dates established by law for the terms of members of the board or body.

(b) The same rules provided for in subsection (a) of this Code section shall be applied insofar as may be practicable in the event a court of competent jurisdiction enters an order changing the composition of Georgia’s congressional districts. In such event, such rules shall be applied as of January 1 of the year following the year in which members of Congress are first elected from Georgia under such court order. If such a court order is stayed, the application of this subsection shall likewise be stayed. If such a court order is subject to appeal but is not stayed and congressional elections are held under such court order, the application of this subsection likewise shall not be stayed. (Code 1981, § 21-1-3, enacted by Ga. L. 2011, Ex. Sess., p. 208, § 5/HB 20EX.)

**Effective date.** — This Code section became effective September 6, 2011.

**Editor’s notes.** — Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by

the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Georgia Congressional Reappointment Act of 2011.’”

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## ARTICLE 1

### GENERAL PROVISIONS

#### 21-2-2. Definitions.

As used in this chapter, the term:

(.1) “Activities of daily living” includes eating, toileting, grooming, dressing, shaving, transferring, and other personal care services.

(.2) “Attendant care services” means services and supports furnished to an individual with a physical disability, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health related functions through hands-on assistance, supervision, or cuing.

(1) “Ballot” means “official ballot” or “paper ballot” and shall include the instrument, whether paper, mechanical, or electronic, by which an elector casts his or her vote.

(2) “Ballot labels” means the cards, paper, or other material placed on the front of a voting machine containing the names of offices and candidates and statements of questions to be voted on.

(3) “Call” or “the call,” as used in relation to special elections or special primaries, means the affirmative action taken by the responsible public officer to cause a special election or special primary to be held. The date of the call shall be the date of the first publication in a newspaper of appropriate circulation of such affirmative action.

(4) “Custodian” means the person charged with the duty of testing and preparing voting equipment for the primary or election and with instructing the poll officers in the use of same.

(4.1) “Direct recording electronic” or “DRE” voting equipment means a computer driven unit for casting and counting votes on which an elector touches a video screen or a button adjacent to a video screen to cast his or her vote.

(5) “Election” ordinarily means any general or special election and shall not include a primary or special primary unless the context in which the term is used clearly requires that a primary or special primary is included.

(6) “Election district” is synonymous with the terms “precinct” and “voting precinct.”

(7) “Elector” means any person who shall possess all of the qualifications for voting now or hereafter prescribed by the laws of this state, including applicable charter provisions, and shall have registered in accordance with this chapter.

(8) “General election” means an election recurring at stated intervals fixed by law or by the respective municipal charters; and the words “general primary” mean a primary recurring at stated intervals fixed by law or by the respective municipal charters.

(9) “Health related functions” means functions that can be delegated or assigned by licensed health care professionals under state law to be performed by an attendant.

(10) "Independent" means a person unaffiliated with any political party or body and includes candidates in a special election for a partisan office for which there has not been a prior special primary.

(11) "Managers" means the chief manager and the assistant managers required to conduct primaries and elections in any precinct in accordance with this chapter.

(12) "Municipal office" means every municipal office to which persons can be elected by a vote of the electors under the laws of this state and the respective municipal charters.

(13) "Municipality" means an incorporated municipality.

(14) "Nomination" means the selection, in accordance with this chapter, of a candidate for a public office authorized to be voted for at an election.

(15) "November election" means the general election held on the Tuesday next following the first Monday in November in each even-numbered year.

(16) "Numbered list of voters" means one or more sheets of uniform size containing consecutively numbered blank spaces for the insertion of voters' names at the time of and in the order of receiving their ballots or number slips governing admissions to the voting machines.

(17) "Oath" shall include affirmation.

(18) "Official ballot" means a ballot, whether paper, mechanical, or electronic, which is furnished by the superintendent or governing authority in accordance with Code Section 21-2-280, including ballots read by optical scanning tabulators.

(19) "Official ballot label" means a ballot label prepared in accordance with Article 9 of this chapter and delivered by the superintendent to the poll officers in accordance with Code Section 21-2-328.

(20) "Paper ballot" or "ballot" means the forms described in Article 8 of this chapter.

(21) "Party nomination" means the selection by a political party, in accordance with this chapter, of a candidate for a public office authorized to be voted for at an election.

(22) Reserved.

(23) "Political body" or "body" means any political organization other than a political party.

(24) "Political organization" means an affiliation of electors organized for the purpose of influencing or controlling the policies and conduct of government through the nomination of candidates for



public office and, if possible, the election of its candidates to public office, except that the term “political organization” shall not include a “subversive organization” as defined in Part 2 of Article 1 of Chapter 11 of Title 16, the “Sedition and Subversive Activities Act of 1953.”

(25) “Political party” or “party” means any political organization which at the preceding:

(A) Gubernatorial election nominated a candidate for Governor and whose candidate for Governor at such election polled at least 20 percent of the total vote cast in the state for Governor; or

(B) Presidential election nominated a candidate for President of the United States and whose candidates for presidential electors at such election polled at least 20 percent of the total vote cast in the nation for that office.

(26) “Poll officers” means the chief manager, assistant managers, and clerks required to conduct primaries and elections in any precinct in accordance with this chapter.

(27) “Polling place” means the room provided in each precinct for voting at a primary or election.

(28) “Precinct” is synonymous with the term “voting precinct” and means a geographical area, established in accordance with this chapter, from which all electors vote at one polling place.

(29) “Primary” means any election held for the purpose of electing party officers or nominating candidates for public offices to be voted for at an election.

(30) “Public office” means every federal, state, county, and municipal office to which persons can be elected by a vote of the electors under the laws of this state or the respective municipal charters, except that the term shall not include the office of soil and water conservation district supervisor.

(31) “Question” means a brief statement of such constitutional amendment, charter amendment, or other proposition as shall be submitted to a popular vote at any election.

(32) “Residence” means domicile.

(33) “Special election” means an election that arises from some exigency or special need outside the usual routine.

(34) “Special primary” means a primary that arises from some exigency or special need outside the usual routine.

(35) “Superintendent” means:

(A) Either the judge of the probate court of a county or the county board of elections, the county board of elections and regis-

tration, the joint city-county board of elections, or the joint city-county board of elections and registration, if a county has such;

(B) In the case of a municipal primary, the municipal executive committee of the political party holding the primary within a municipality or its agent or, if none, the county executive committee of the political party or its agent;

(C) In the case of a nonpartisan municipal primary, the person appointed by the proper municipal executive committee; and

(D) In the case of a municipal election, the person appointed by the governing authority pursuant to the authority granted in Code Section 21-2-70.

(36) "Swear" shall include affirm.

(37) "Violator" means any individual, partnership, committee, association, corporation, limited liability company, limited liability partnership, professional corporation, trust, enterprise, franchise, joint venture, political party, political body, candidate, campaign committee, political action committee or any other political committee or business entity, or any governing authority that violates any provision of this chapter.

(38) Reserved.

(39) "Voter" is synonymous with the term "elector."

(40) "Voting machine" is a mechanical device on which an elector may cast a vote and which tabulates those votes by its own devices and is also known as a "lever machine."

(41) "Write-in ballot" means the paper or other material on which a vote is cast for persons whose names do not appear on the official ballot or ballot labels. (Code 1933, § 34-103, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 1; Ga. L. 1978, p. 1004, §§ 1, 2; Ga. L. 1979, p. 964, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 696, § 1; Ga. L. 1988, p. 964, § 1; Ga. L. 1989, p. 10, § 1; Ga. L. 1994, p. 279, § 1; Ga. L. 1997, p. 590, § 1; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 1, 2, 25, 26; Ga. L. 2001, Ex. Sess., p. 325, § 1; Ga. L. 2002, p. 598, §§ 1-1, 2-1; Ga. L. 2003, p. 151, § 1; Ga. L. 2003, p. 517, § 1; Ga. L. 2005, p. 253, § 1/HB 244; Ga. L. 2006, p. 888, § 1/HB 1435; Ga. L. 2010, p. 914, § 1/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted the second sentence in paragraph (20), which read: "The term 'paper ballot' shall not include a ballot card."

**Administrative rules and regula-**

**tions.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, Sec. 183-1-8-.01.

Definition of vote and review of ballots,

Official Compilation of the Rules and Regulations of the State of Georgia, Returns of Primaries and Elections, Sec. 183-1-15-.02.

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION RESIDENCE

##### General Consideration

**Cited** in *Favorito v. Handel*, 285 Ga. 795, 684 S.E.2d 257 (2009); *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

##### Residence

**Candidate improperly deemed ineligible based on residency.** — In ruling a candidate was not qualified to be elected as

a member of the commission from a Georgia Public Service Commission district because the candidate did not meet the residency requirements of O.C.G.A. § 46-2-1(b), the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring the other applicable portions of § 21-2-217(a) to determine the candidate's residency. *Handel v. Powell*, 284 Ga. 550, 670 S.E.2d 62 (2008).

#### **21-2-4.1. Continuation in office, dismissal, or appointment of members of constitutional or statutory boards or bodies for which membership based on residency within congressional district.**

Repealed by Ga. L. 2011, Ex. Sess., p. 208, § 6/HB 20EX, effective September 6, 2011.

**Editor's notes.** — This Code section was based on Code 1933, § 34-1803, enacted by Ga. L. 1981, Ex. Sess., p. 131, § 1; Code 1981, § 21-2-4.1, enacted by Ga. L. 1981, Ex. Sess., p. 131, § 2; Ga. L. 1990, p. 1903, § 6; Ga. L. 1996, p. 229, § 1; Ga. L. 1998, p. 295, § 1.

Ga. L. 2011, Ex. Sess., p. 208, § 1/HB 20EX, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Congressional Reapportionment Act of 2011.'"

#### **21-2-5. Qualifications of candidates for federal and state office; determination of qualifications.**

## JUDICIAL DECISIONS

**Candidate improperly deemed ineligible.** — In ruling a candidate was not qualified to be elected as a member of the commission from a Georgia Public Service Commission district because the candidate did not meet the residency requirements of O.C.G.A. § 46-2-1(b), the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring

the other applicable portions of § 21-2-217(a) to determine the candidate's residency. *Handel v. Powell*, 284 Ga. 550, 670 S.E.2d 62 (2008).

**Candidate was resident of district.** — Although a candidate for membership in the commission from a Georgia Public Service Commission district owned property outside the district on which the candidate held a homestead exemption



until a month before the Georgia Secretary of State filed a challenge under O.C.G.A. § 21-2-5, the candidate was a resident of the district for purposes of O.C.G.A. § 46-2-1(b). The candidate spent

the most of the candidate's time in the district, was registered to vote there, paid taxes there, and registered automobiles there. *Handel v. Powell*, 284 Ga. 550, 670 S.E.2d 62 (2008).

### **21-2-9. Date of election for offices.**

(a) The Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, members of Congress, district attorneys, members of the General Assembly, and county officers not elected pursuant to Code Section 21-2-139 shall be elected in the November election next preceding the expiration of the term of office.

(b) Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, and county judicial officers, offices of local school boards, and nonpartisan offices elected pursuant to Code Section 21-2-139 shall be elected in the nonpartisan general election next preceding the expiration of the term of office.

(c) All general municipal elections to fill municipal offices shall be held on the Tuesday next following the first Monday in November in each odd-numbered year. Public notice of such elections shall be published by the governing authority of the municipality in a newspaper of general circulation in the municipality at least 30 days prior to the elections. In addition, the municipality shall immediately transmit a copy of such notice to the Secretary of State.

(d) Whenever a municipal general primary or election is held in conjunction with the general primary or November general election in even-numbered years, the time specified for the closing of the registration list, the time within which candidates must qualify for the municipal primary or election, and the time specified for the holding of any runoff necessary shall be the same as specified for general elections. (Orig. Code 1863, §§ 1245, 1265, 1266, 1267, 1268, 1270, 1274; Code 1868, §§ 1326, 1346, 1347, 1348, 1349, 1351, 1355; Ga. L. 1869, p. 22, §§ 1, 2; Ga. L. 1872, p. 29, § 2; Ga. L. 1872, p. 80, § 8; Code 1873, §§ 1305, 1319, 1320, 1321, 1323, 1327; Code 1882, §§ 1305, 1319, 1320, 1321, 1323, 1327; Ga. L. 1894, p. 40, § 1; Civil Code 1895, §§ 83, 97, 98, 99, 101, 105; Ga. L. 1898, p. 42, § 1; Ga. L. 1898, p. 43, § 1; Civil Code 1910, §§ 97, 111, 112, 113, 115, 119; Ga. L. 1913, p. 135, § 1; Ga. L. 1914, p. 47, § 1; Code 1933, §§ 34-2302, 34-2401, 34-2602, 34-2603, 34-2701, 34-2705; Ga. L. 1957, p. 102, § 1; Ga. L. 1957, p. 117, § 1; Code 1933, § 34-802, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1978, p. 1004, § 15; Ga. L. 1983, p. 884, § 6-3; Ga. L. 1986, p. 855, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 4/HB 244; Ga. L. 2008, p. 817, § 1/HB 1098; Ga. L. 2012, p. 995, § 1/SB 92.)



**The 2012 amendment**, effective July 1, 2012, in subsection (a), deleted “Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts,” following “members of Congress,” and inserted “not elected pursuant to Code Section 21-2-139” near the end; added present subsection (b); redesignated former subsection (b) as present subsection (c); and added subsection (d).

**21-2-11. Performance of duties by presidential electors.**

**Law reviews.** — For survey article on zoning and land use law, see 60 Mercer L. Rev. 457 (2008).

**21-2-13. Compensation of presidential electors; payment of expenses of electoral college.**

Each presidential elector shall receive from the state treasury the sum of \$50.00 for every day spent in traveling to, remaining at, and returning from the place of meeting and shall be entitled to mileage at the rate of 10¢ per mile to and from his or her home. The reasonable expenses of the electoral college shall likewise be paid by the state treasurer, in both cases upon warrants drawn by the presiding officer of the college. (Orig. Code 1863, § 1257; Code 1868, § 1338; Code 1873, § 1317; Code 1882, § 1317; Ga. L. 1882-83, p. 54, § 1; Civil Code 1895, § 95; Civil Code 1910, § 109; Code 1933, § 34-2507; Code 1933, § 34-1604, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 863, § 3/SB 296.)

**The 2010 amendment**, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” near the middle of the last sentence.

ARTICLE 2  
SUPERVISORY BOARDS AND OFFICERS

PART 1

STATE ELECTION BOARD, COUNTY BOARD OF ELECTIONS,  
AND COUNTY BOARD OF ELECTIONS  
AND REGISTRATION

Subpart 1

State Election Board

**21-2-31. Duties.**

It shall be the duty of the State Election Board:

- (1) To promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars,

deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections;

(2) To formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections; and, upon the adoption of each rule and regulation, the board shall promptly file certified copies thereof with the Secretary of State and each superintendent;

(3) To publish in print or electronically and furnish to primary and election officials, from time to time, a sufficient number of indexed copies of all primary and election laws and pertinent rules and regulations then in force;

(4) To publish in print or electronically and distribute such explanatory pamphlets regarding the interpretation and application of primary and election laws as in the opinion of the board should be distributed to the electorate;

(5) To investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution. Nothing in this paragraph shall be so construed as to require any complaining party to request an investigation by the board before such party might proceed to seek any other remedy available to that party under this chapter or any other provision of law;

(6) To make such recommendations to the General Assembly as it may deem advisable relative to the conduct and administration of primaries and elections;

(7) To promulgate rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system used in this state;

(8) To employ such assistants as may be necessary;

(9) Subject to funds being specifically appropriated by the General Assembly, to formulate and conduct a voter education program concerning voting procedures for voting by absentee ballot and at the polls with particular emphasis on the proper types of identification required for voting; and

(10) To take such other action, consistent with law, as the board may determine to be conducive to the fair, legal, and orderly conduct of primaries and elections. (Ga. L. 1958, p. 269, § 45; Ga. L. 1959, p.

57, § 1; Code 1933, § 34-202, enacted by Ga. L. 1968, p. 862, § 2; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 1670, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 2; Ga. L. 2003, p. 517, § 2; Ga. L. 2006, p. 3, § 1/SB 84; Ga. L. 2008, p. 781, § 2/HB 1112; Ga. L. 2010, p. 838, § 10/SB 388.)

**The 2010 amendment**, effective June 3, 2010, inserted “in print or electronically” in paragraphs (3) and (4).

**Administrative rules and regulations.** — Registration of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, State Election Board, Chapter 183-1-6.

Returns of primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, State Election Board, Chapter 183-1-15.

Rules of the State Election Board, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Chapter 183-1-1 through 183-2-16.

## Subpart 2

### County Board of Elections and County Board of Elections and Registration

#### **21-2-40. General Assembly authorized to create board of elections and board of elections and registration in any county.**

(a) The General Assembly may by local Act create a board of elections in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections. Such board shall consist of not fewer than three members.

(b) The General Assembly may by local Act create a board of elections and registration in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections and with the powers and duties of the board of registrars relating to the registration of voters and absentee-balloting procedures. Such board shall consist of not fewer than three members. (Code 1981, § 21-2-40, enacted by Ga. L. 1982, p. 1292, § 2; Ga. L. 1983, p. 140, § 1; Ga. L. 1990, p. 243, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2012, p. 995, § 2/SB 92.)

**The 2012 amendment**, effective July 1, 2012, added the last sentence to subsections (a) and (b).



## Subpart 3

## Municipal Elections Conducted by Counties

**21-2-45. Authorization to create joint county-municipal boards of elections and boards of elections and registration; authorization for county to conduct elections.**

(a) The General Assembly may by local Act create a joint county-municipal board of elections in any county of this state for that county and any municipality located wholly or partially within that county and empower the board with the powers and duties of the election superintendent of that county and municipality with regard to the conduct of primaries and elections. Such board shall consist of not fewer than three members.

(b) The General Assembly may by local Act create a joint county-municipal board of elections and registration in any county of this state for that county and any municipality located wholly or partially within that county and empower the board with the powers and duties of the election superintendent of that county and municipality with regard to the conduct of primaries and elections and empower the board with the powers and duties of the registrars and board of registrars of that municipality and county with regard to the registration of voters and absentee-balloting procedures. Such board shall consist of not fewer than three members.

(c) The governing authority of any municipality may authorize any county within which that municipality wholly or partially lies to conduct any or all elections held pursuant to this chapter. In the event a municipality shall by ordinance authorize such county to conduct elections, such municipality may request such county to perform any or all of the functions:

(1) That the county shall perform all duties as superintendent of elections as specified under this chapter;

(2) That the county shall perform all duties as superintendent of elections as specified under this chapter, with the exception of the qualification of candidates; or

(3) That the county shall lease or loan any or all of its election equipment to the municipality for the purpose of conducting municipal elections without any responsibility on the part of the county for the actual conduct of the municipal election.

With reference to any election, such municipality shall pay such county all costs incurred in performing those functions which the municipality has requested the county to perform; and, unless otherwise authorized,

such county shall only perform those functions specifically enumerated in the contract. Such county shall have authority to conduct elections in any and all counties in which any part of such municipality may lie. (Code 1981, § 21-2-45, enacted by Ga. L. 1984, p. 680, § 1; Ga. L. 1986, p. 772, § 1; Ga. L. 1987, p. 1360, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 3/SB 92.)

**The 2012 amendment**, effective July 1, 2012, added the last sentence to subsections (a) and (b).

**21-2-45.1. Special elections on bonded debt; publication; date; discount.**

**Administrative rules and regulations.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Dates of Primaries and Elections, Sec. 183-1-8-.01.

PART 3

SUPERINTENDENTS

**21-2-70. Powers and duties.**

Each superintendent within his or her county or municipality shall exercise all the powers granted to him or her by this chapter and shall perform all the duties imposed upon him or her by this chapter, which shall include the following:

- (1) To receive and act upon all petitions presented by electors, the board of registrars, or the county executive committee of a political party for the division, redivision, alteration, change, or consolidation of precincts;
- (2) To receive and determine the sufficiency of nomination petitions of candidates filing notice of their candidacy with him or her in accordance with this chapter;
- (3) To prepare and publish, in the manner provided by this chapter, all notices and advertisements, in connection with the conduct of elections, which may be required by law, and to transmit immediately to the Secretary of State a copy of any publication in which a call for a special primary, election, or runoff is issued;
- (4) To select and equip polling places for use in primaries and elections in accordance with this chapter;
- (5) To purchase, except voting machines, preserve, store, and maintain election equipment of all kinds, including voting booths and ballot boxes and to procure ballots and all other supplies for primaries and elections;

(6) To appoint poll officers and other officers to serve in primaries and elections in accordance with this chapter;

(7) To make and issue such rules, regulations, and instructions, consistent with law, including the rules and regulations promulgated by the State Election Board, as he or she may deem necessary for the guidance of poll officers, custodians, and electors in primaries and elections;

(8) To instruct poll officers and others in their duties, calling them together in meetings whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several precincts of his or her county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted;

(9) To receive from poll officers the returns of all primaries and elections, to canvass and compute the same, and to certify the results thereof to such authorities as may be prescribed by law;

(10) To announce publicly, by posting in his or her office, the results of all primaries and elections held in his or her county or municipality;

(11) In any general election at which a proposal to amend the Constitution or to provide for a new Constitution is submitted to the electors for ratification, the election superintendent shall provide copies of the summary of such proposal prepared pursuant to Article X, Section I, Paragraph II of the Constitution as provided in this paragraph. A reasonable number of copies of such summary shall be conspicuously available in each polling place;

(12) To prepare annually a budget estimate of his or her expenses under this chapter, in which shall be set forth an itemized list of expenditures for the preceding two years and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and to submit the same at the time and in the manner and form other budget estimates of his or her county or municipality are now or may hereafter be required to be filed;

(13) To conduct all elections in such manner as to guarantee the secrecy of the ballot and to perform such other duties as may be prescribed by law;

(14) To become certified by satisfactorily completing a certification program as set forth in Code Section 21-2-101; and

(15)(A) In the case of a judge of the probate court serving as the election superintendent, such person shall take an oath in the following form upon assuming the duties of election superintendent which shall apply to all primaries and elections conducted by such person throughout such person's tenure as election superintendent:



I, \_\_\_\_\_, do swear (or affirm) that I will as superintendent duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of such primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.

(B) In the case of a board of elections, each member of the board shall take an oath in the following form upon becoming a member of the board which shall apply to all primaries and elections conducted by the board throughout such person's tenure on the board:

I, \_\_\_\_\_, do swear (or affirm) that I will as a member of the board of elections duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of such primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.

(C) In the case of an election supervisor or designee for a board of elections or board of elections and registration, the election supervisor or designee shall take an oath in the following form upon being appointed as an election supervisor or designee of the board which shall apply to all primaries and elections conducted by the board throughout such person's tenure:

I, \_\_\_\_\_, do swear (or affirm) that I will duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a true and perfect return of such primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.

(D) Each judge of the probate court serving as an election superintendent, each member of a board of elections or board of elections and registration, and each election supervisor or designee for a board of elections or board of elections and registration serving on July 1, 2011, shall take the appropriate oath as set forth in this Code section which shall apply to all primaries and elections conducted throughout such person's tenure in that position. (Code 1933, § 34-401, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L.



1970, p. 347, § 4; Ga. L. 1981, p. 1718, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1997, p. 590, § 4; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2003, p. 517, § 5; Ga. L. 2008, p. 781, § 3/HB 1112; Ga. L. 2008, p. 817, § 3/HB 1098; Ga. L. 2011, p. 683, § 1/SB 82.)

**The 2011 amendment**, effective July 1, 2011, rewrote paragraph (15), which read: "To take an oath in the following form:

"I, \_\_\_\_\_, do swear (or affirm) that I will as superintendent duly attend the ensuing election (or primary) during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will make a

true and perfect return of the said election (or primary), and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability."

**Administrative rules and regulations.** — Ballot secrecy for handicapped persons, Official Compilation of the Rules and Regulations of the State of Georgia, Ballots, Sec. 183-1-11-.01.

## JUDICIAL DECISIONS

**Cited** in *Lewis v. O'Day*, 284 Ga. 423, 667 S.E.2d 594 (2008).

## PART 4

### POLL OFFICERS

## 21-2-90. Appointment of chief manager and assistant managers.

All elections and primaries shall be conducted in each polling place by a board consisting of a chief manager, who shall be chairperson of such board, and two assistant managers assisted by clerks. The managers of each polling place shall be appointed by the superintendent. If the political parties involved elect to do so, they may submit to the superintendent, for consideration in making such appointment, a list of qualified persons. When such lists are submitted to the appropriate office, the superintendent, insofar as practicable, shall make appointments so that there shall be equal representation on such boards for the political parties involved in such elections or primaries. The superintendent shall make each appointment by entering an order which shall remain of record in the appropriate office and shall make such order available for public inspection upon request. The order shall include the name and address of the appointee, his or her title, and a designation of the precinct and primary or election in which he or she is to serve. (Code 1933, § 34-501, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 4; Ga. L. 1970, p. 347, § 9; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2005, p. 253, § 9/HB 244; Ga. L. 2010, p. 914, § 2/HB 540; Ga. L. 2011, p. 683, § 2/SB 82; Ga. L. 2012, p. 995, § 4/SB 92.)

**The 2010 amendment**, effective July 1, 2010, substituted “polling place” for “precinct” in the first and second sentences.

**The 2011 amendment**, effective July 1, 2011, substituted “shall make such order available for public inspection upon request” for “transmit a copy of such order to the appointee” in the next-to-last sentence.

**The 2012 amendment**, effective July 1, 2012, at the end of the second sentence, deleted “or, in the case of municipal elections, by the municipal governing authority”, and deleted “or municipal governing authority” following “superintendent” in the third through fifth sentences.

## JUDICIAL DECISIONS

**New election managers not required.** — Trial court properly denied two challengers’ petition contesting a city’s general election as the challengers failed to show fraud, misconduct, irregularity, or illegality; a new election manager was not required for each election; a jury trial was

not warranted in the matter; and there was no basis shown to set aside the results of the runoff election. *Fuller v. Thomas*, 284 Ga. 397, 667 S.E.2d 587 (2008).

**Cited in** *Lewis v. O’Day*, 284 Ga. 423, 667 S.E.2d 594 (2008).

### 21-2-92. Qualifications of poll officers; service during municipal election or primary; Student Teen Election Participant (STEP) program.

(a) Poll officers appointed pursuant to Code Sections 21-2-90 and 21-2-91 shall be judicious, intelligent, and upright citizens of the United States, residents of or otherwise employed by the county in which they are appointed or, in the case of municipal elections, residents of or otherwise employed by the municipality in which the election is to be held or of the county in which that municipality is located, 16 years of age or over, and shall be able to read, write, and speak the English language. No poll officer shall be eligible for any nomination for public office or to be voted for at a primary or election at which the poll officer shall serve. No person who is otherwise holding public office, other than a political party office, shall be eligible to be appointed as or to serve as a poll officer. A parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of a candidate shall not be eligible to serve as a poll officer in any precinct in which such candidate’s name appears on the ballot in any primary or election.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in the event that a municipal primary or election is held in conjunction with a regular county, state, or federal election, poll officers assigned by the county election superintendent to conduct such county, state, or federal election shall also be authorized to serve as poll officers to conduct such municipal election or primary and shall not be required to be residents of said municipality.

(c) Each local board of education and election superintendent shall be authorized to develop and implement through a coordinated effort a Student Teen Election Participant (STEP) program. The STEP program shall permit full-time public, private, and home schooled high school students to volunteer to work as poll officers during any primary, special, or general election. In addition to the qualifications set forth in subsection (a) of this Code section, a student participating in the STEP program shall:

- (1) Be a United States citizen;
- (2) Have a Georgia driver's license or Georgia state-issued identification card;
- (3) Have demonstrated age-appropriate academic ability for the previous school year; and
- (4) Have a history of responsible school and community behavior.

A student participating in the STEP program shall at all times while working as a poll officer remain under the supervision of an adult poll officer or manager who is 21 years of age or older. No student shall be permitted to participate in the STEP program without the written authorization of his or her parent or legal guardian and such other documentation as may be required by the local board of education or election superintendent. A student in the STEP program shall work a minimum of four but not more than six hours during a single election day and shall receive age-appropriate training for serving as a poll officer. A student who successfully participates in the STEP program shall be counted as present and given full credit for the school day during which he or she served in the STEP program. No student shall be permitted to be absent from school or participate in the STEP program for more than two school days. The election superintendent and local board of education shall adopt mutually agreed upon rules, regulations, and policies prior to the initiation of a STEP program. (Code 1933, § 34-503, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1994, p. 1406, § 1; Ga. L. 1997, p. 649, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 3/HB 540; Ga. L. 2012, p. 1026, § 1/SB 101.)

**The 2010 amendment,** effective July 1, 2010, inserted “or otherwise employed by” twice in the first sentence of subsection (a).

**The 2012 amendment,** effective May 2, 2012, added subsection (c).

## 21-2-94. Form of manager's oath.

**Administrative rules and regulations.** — Training and certification of tabulating center personnel, Official Compi-

lation of the Rules and Regulations of the State of Georgia, Voting Machines — Vote Recorders, Sec. 183-1-12-.03.



**21-2-95. Form of clerk's oath.**

**Administrative rules and regulations.** — Training and certification of tabulating center personnel, Official Compi-

lation of the Rules and Regulations of the State of Georgia, Voting Machines — Vote Recorders, Sec. 183-1-12-.03.

**21-2-98. Compensation of poll officers.**

(a) The compensation of managers and clerks serving in elections shall be fixed and paid by the superintendent or, in the case of municipal elections, by the governing authority. Compensation for such poll officers serving in a primary shall be fixed and paid by the superintendent.

(b) Notwithstanding the provisions of subsection (a) of this Code section, in all counties of this state having a population of 200,000 or more according to the United States decennial census of 1990 or any future such census, the minimum compensation for the chief manager shall be \$95.00 per diem; the minimum compensation for each assistant manager shall be \$66.00 per diem; and the minimum compensation for each clerk shall be \$60.00 per diem.

(c) It shall not be necessary to compensate volunteers who are appointed to serve as poll officers and who agree to perform the duties of manager or clerk without compensation. (Ga. L. 1896, p. 40, §§ 1, 2; Civil Code 1910, § 82; Code 1933, § 34-1303; Ga. L. 1952, p. 197, § 1; Ga. L. 1957, p. 218, § 1; Code 1933, § 34-508, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1982, p. 513, §§ 1, 2; Ga. L. 1992, p. 2590, § 2; Ga. L. 1995, p. 570, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 4/HB 540.)

**The 2010 amendment**, effective July 1, 2010, added subsection (c).

**21-2-99. Instruction of poll officers and workers in election procedures; certifications; notification of completion of training to Secretary of State.**

**Administrative rules and regulations.** — Training and certification of tabulating center personnel, Official Compi-

lation of the Rules and Regulations of the State of Georgia, Voting Machines — Vote Recorders, Sec. 183-1-12-.03.

**21-2-101. Certification program for county and municipal election superintendents or election board designee; waiver of certification; failure to comply.**

(a) All county and municipal election superintendents, chief registrars, and absentee ballot clerks or, in the case of a board of elections or a board of elections and registration, the designee of such board charged

with the daily operations of such board shall become certified by completing a certification program approved by the Secretary of State by no later than December 31 of the year in which they are appointed. Such program may include instruction on, and may require the superintendent to demonstrate proficiency in, the operation of the state's direct recording electronic voting equipment, the operation of the voting equipment used in such superintendent's jurisdiction, and in state and federal law and procedures related to elections. The local government employing the superintendent or designee shall cover the costs, if any, incurred by such superintendent's or designee's participation in the certification program. Such certification programs shall be offered by the Secretary of State on multiple occasions before December 31 of the year in which such superintendents or designees are appointed and shall not exceed 64 hours of classroom, online, and practical instruction as authorized and approved by the Secretary of State.

(b) Any county chief registrar or municipal absentee ballot clerk appointed prior to January 1, 2010, who has not met the certification requirement shall complete a certification program approved by the Secretary of State by no later than December 31, 2011.

(c)(1) A full, partial, or conditional waiver of the certification requirement may be granted by the Secretary of State, in the discretion of the Secretary of State, upon the presentation of evidence by the election superintendent or board that the individual was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the Secretary of State.

(2) In the event that a municipality authorizes a county to conduct its elections pursuant to Code Section 21-2-45, the municipality may be granted by the Secretary of State, in the discretion of the Secretary of State, a waiver of the certification requirement, provided that the superintendent in charge of running the municipal election shall have previously completed a certification program approved by the Secretary of State and has demonstrated a proficiency in the operation of the voting equipment used in said municipality.

(d) A superintendent and the county or municipal governing authority which employs such superintendent may be fined by the State Election Board for failure to attain the certification required in this Code section. (Code 1981, § 21-2-101, enacted by Ga. L. 2003, p. 517, § 9; Ga. L. 2005, p. 253, § 12/HB 244; Ga. L. 2007, p. 544, § 1/SB 194; Ga. L. 2008, p. 781, § 5/HB 1112; Ga. L. 2010, p. 914, § 5/HB 540.)

**The 2010 amendment**, effective July 1, 2010, inserted “, chief registrars, and absentee ballot clerks” in the first sentence of subsection (a); and, in subsection (b), substituted “county chief registrar or

municipal absentee ballot clerk” for “county or municipal election superintendent”, substituted “January 1, 2010” for “January 1, 2008” and substituted “December 31, 2011” for “December 31, 2008”.

## JUDICIAL DECISIONS

Cited in *Lewis v. O'Day*, 284 Ga. 423,  
667 S.E.2d 594 (2008).

## ARTICLE 4

SELECTION AND QUALIFICATION OF CANDIDATES AND  
PRESIDENTIAL ELECTORS

## PART 1

## GENERAL PROVISIONS

**21-2-132. Filing notice of candidacy, nomination petition, and affidavit; payment of qualifying fee; pauper's affidavit and qualifying petition for exemption from qualifying fee; military service.**

(a) The names of nominees of political parties nominated in a primary and the names of nominees of political parties for the office of presidential elector shall be placed on the election ballot without their filing the notice of candidacy otherwise required by this Code section.

(b) Candidates seeking election in a nonpartisan election shall comply with the requirements of subsections (c) and (f) of this Code section, as modified by subsection (g) of this Code section, by the date prescribed and shall by the same date pay to the proper authority the qualifying fee prescribed by Code Section 21-2-131 in order to be eligible to have their names placed on the nonpartisan election ballots.

(c) Except as provided in subsection (i) of this Code section, all candidates seeking election in a nonpartisan election shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this subsection in order to be eligible to have their names placed on the nonpartisan election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

(1) Each candidate for the office of judge of the superior court, Judge of the Court of Appeals, or Justice of the Supreme Court, or the candidate's agent, desiring to have his or her name placed on the nonpartisan election ballot shall file a notice of candidacy, giving his or her name, residence address, and the office sought, in the office of the Secretary of State no earlier than 9:00 A.M. on the fourth Monday in April immediately prior to the election and no later than 12:00 Noon on the Friday following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays;

(2) Each candidate for a county judicial office, a local school board office, or an office of a consolidated government, or the candidate's



agent, desiring to have his or her name placed on the nonpartisan election ballot shall file notice of candidacy in the office of the superintendent no earlier than 9:00 A.M. on the fourth Monday in April immediately prior to the election and no later than 12:00 Noon on the Friday following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays;

(3) Each candidate for a nonpartisan municipal office or a designee shall file a notice of candidacy in the office of the municipal superintendent of such candidate's municipality during the municipality's nonpartisan qualifying period. Each municipal superintendent shall designate the days of such qualifying period, which shall be no less than three days and no more than five days. The days of the qualifying period shall be consecutive days. Nonpartisan qualifying periods shall commence no earlier than 8:30 A.M. on the last Monday in August immediately preceding the general election and shall end no later than 4:30 P.M. on the following Friday; and, in the case of a special election, the municipal nonpartisan qualifying period shall commence no earlier than the date of the call and shall end no later than 25 days prior to the election; and

(4) In any case where an incumbent has filed notice of candidacy and paid the prescribed qualifying fee in a nonpartisan election to succeed himself or herself in office but withdraws as a candidate for such office prior to the close of the applicable qualifying period prescribed in this subsection, qualifying for candidates other than such incumbent shall be reopened at 9:00 A.M. on the Monday next following the close of the preceding qualifying period and shall cease at 5:00 P.M. on the Tuesday immediately following such reopening, notwithstanding the fact that any such days may be legal holidays.

(d) Except as provided in subsection (i) of this Code section, all political body and independent candidates shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this subsection in order to be eligible to have their names placed on the election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

(1) Each candidate for federal or state office, or his or her agent, desiring to have his or her name placed on the election ballot shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, in the office of the Secretary of State either during the period beginning at 9:00 A.M. on the fourth Monday in April immediately prior to the election and ending at 12:00 Noon on the Friday following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M. on the fourth Monday in June immediately prior to the election and ending at 12:00



Noon on the Friday following the fourth Monday in June, notwithstanding the fact that any such days may be legal holidays, in the case of a general election and no earlier than the date of the call of the election and no later than 25 days prior to the election in the case of a special election;

(2) Each candidate for a county office, or his or her agent, desiring to have his or her name placed on the election ballot shall file notice of his or her candidacy in the office of the superintendent of his or her county either during the period beginning at 9:00 A.M. on the fourth Monday in April immediately prior to the election and ending at 12:00 Noon on the Friday following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M. on the fourth Monday in June immediately prior to the election and ending at 12:00 Noon on the Friday following the fourth Monday in June, notwithstanding the fact that any such days may be legal holidays, in the case of a general election and no earlier than the date of the call of the election and no later than 25 days prior to the election in the case of a special election;

(3) Each candidate for municipal office or a designee shall file a notice of candidacy in the office of the municipal superintendent of such candidate's municipality during the municipality's qualifying period. Each municipal superintendent shall designate the days of the qualifying period, which shall be no less than three days and no more than five days. The days of the qualifying period shall be consecutive days. Qualifying periods shall commence no earlier than 8:30 A.M. on the last Monday in August immediately preceding the general election and shall end no later than 4:30 P.M. on the following Friday; and, in the case of a special election, the municipal qualifying period shall commence no earlier than the date of the call and shall end no later than 25 days prior to the election; and

(4)(A) In extraordinary circumstances as described in Code Section 21-2-543.1, each candidate, or his or her agent, desiring to have his or her name placed on the election ballot shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, with the Office of the Secretary of State no earlier than the date of the call of the special election and not later than ten days after the announcement of such extraordinary circumstances.

(B) The provisions of this subsection shall not apply where, during the 75 day period beginning on the date of the announcement of the vacancy:

(i) A regularly scheduled general election for the vacant office is to be held; or

(ii) Another special election for the vacant office is to be held pursuant to a writ for a special election issued by the Governor prior to the date of the announcement of the vacancy.

The hours of qualifying each day shall be from 8:30 A.M. until 4:30 P.M. with one hour allowed for the lunch break; provided, however, that municipalities which have normal business hours which cover a lesser period of time shall conduct qualifying during normal business hours for each such municipality. Except in the case of a special election, notice of the opening and closing dates and the hours for candidates to qualify shall be published at least two weeks prior to the opening of the qualifying period.

(e) Except as provided in subsection (i) of this Code section, each candidate required to file a notice of candidacy by this Code section shall, no earlier than 9:00 A.M. on the fourth Monday in June immediately prior to the election and no later than 12:00 Noon on the second Tuesday in July immediately prior to the election, file with the same official with whom he or she filed his or her notice of candidacy a nomination petition in the form prescribed in Code Section 21-2-170, except that such petition shall not be required if such candidate is:

(1) A nominee of a political party for the office of presidential elector when such party has held a national convention and therein nominated candidates for President and Vice President of the United States;

(2) Seeking office in a special election;

(3) An incumbent qualifying as a candidate to succeed himself or herself;

(4) A candidate seeking election in a nonpartisan election; or

(5) A nominee for a state-wide office by a duly constituted political body convention, provided that the political body making the nomination has qualified to nominate candidates for state-wide public office under the provisions of Code Section 21-2-180.

(f) Each candidate required by this Code section to file a notice of candidacy shall accompany his or her notice of candidacy with an affidavit stating:

(1) His or her full name and the name as the candidate desires it to be listed on the ballot. The surname of the candidate shall be the surname of the candidate as it appears on the candidate's voter registration card unless the candidate provides proof that his or her surname as it appears on the candidate's registration card is incorrect in which event the correct name shall be listed. After such name is submitted to the Secretary of State or the election superintendent,

the form of such name shall not be changed during the election for which such notice of candidacy is submitted;

(2) His or her residence, with street and number, if any, and his or her post office address;

(3) His or her profession, business, or occupation, if any;

(4) The name of his or her precinct;

(5) That he or she is an elector of the county or municipality of his or her residence eligible to vote in the election in which he or she is a candidate;

(6) The name of the office he or she is seeking;

(7) That he or she is eligible to hold such office;

(8) That the candidate has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction of domestic violence under the laws of this state or any other state or of the United States, or that the candidate's civil rights have been restored and that at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude;

(9) That he or she will not knowingly violate this chapter or rules and regulations adopted under this chapter; and

(10) Any other information as may be determined by the Secretary of State to be necessary to comply with federal and state law.

The affidavit shall contain such other information as may be prescribed by the officer with whom the candidate files his or her notice of candidacy.

(g) A pauper's affidavit may be filed in lieu of paying the qualifying fee otherwise required by this Code section and Code Sections 21-2-131 and 21-2-138 of any candidate who has filed a qualifying petition as provided for in subsection (h) of this Code section. A candidate filing a pauper's affidavit instead of paying a qualifying fee shall under oath affirm his or her poverty and his or her resulting inability to pay the qualifying fee otherwise required. The form of the affidavit shall be prescribed by the Secretary of State and shall include a financial statement which lists the total income, assets, liabilities, and other relevant financial information of the candidate and shall indicate on its face that the candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The affidavit shall contain an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The following warning shall be



printed on the affidavit form prepared by the Secretary of State, to wit: "WARNING: Any person knowingly making any false statement on this affidavit commits the offense of false swearing and shall be guilty of a felony." The name of any candidate who subscribes and swears to an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required shall be placed on the ballot by the Secretary of State or election superintendent, as the case may be.

(h) No candidate shall be authorized to file a pauper's affidavit in lieu of paying the qualifying fee otherwise required by this Code section and Code Section 21-2-138 unless such candidate has filed a qualifying petition which complies with the following requirements:

(1) A qualifying petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to one-fourth of 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. A qualifying petition of a candidate for any other office shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. However, in the case of a candidate seeking an office for which there has never been an election or seeking an office in a newly constituted constituency, the percentage figure shall be computed on the total number of registered voters in the constituency who would have been qualified to vote for such office had the election been held at the last general election and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected;

(2) Each person signing a qualifying petition shall declare therein that he or she is a duly qualified and registered elector of the state entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, which shall be subscribed and sworn to by such circulator before a notary public and shall set forth:



(A) His or her residence address, giving municipality with street and number, if any;

(B) That each signer manually signed his or her own name with full knowledge of the contents of the qualifying petition;

(C) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and

(D) That, to the best of the affiant's knowledge and belief, the signers are registered electors of the state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit;

(3) A qualifying petition shall be in the form and manner determined by the Secretary of State and approved by the State Elections Board;

(4) No qualifying petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same; and

(5) A qualifying petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

No notary public may sign the petition as an elector or serve as a circulator of any petition which he or she notarized. Any and all sheets of a petition that have the circulator's affidavit notarized by a notary public who also served as a circulator of one or more sheets of the petition or who signed one of the sheets of the petition as an elector shall be disqualified and rejected.

(i) Notwithstanding any other provision of this chapter to the contrary, for general elections held in the even-numbered year immediately following the official release of the United States decennial census data to the states for the purpose of redistricting of the legislatures and the United States House of Representatives, candidates in such elections shall qualify as provided in this subsection:

(1) All candidates seeking election in a nonpartisan election shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this paragraph in order to be eligible to have their names placed on the nonpartisan election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

(A) Each candidate for the office of judge of the superior court, Judge of the Court of Appeals, or Justice of the Supreme Court, or the candidate's agent, desiring to have his or her name placed on

the nonpartisan election ballot shall file a notice of candidacy, giving his or her name, residence address, and the office sought, in the office of the Secretary of State at the same time as candidates for party nomination in the general primary as provided in paragraph (1) of subsection (c) of Code Section 21-2-153, notwithstanding the fact that any such days may be legal holidays;

(B) Each candidate for a county judicial office, a local school board office, or an office of a consolidated government, or the candidate's agent, desiring to have his or her name placed on the nonpartisan election ballot shall file a notice of candidacy in the office of the superintendent at the same time as candidates for party nomination in the general primary as provided in paragraph (1) of subsection (c) of Code Section 21-2-153, notwithstanding the fact that any such days may be legal holidays; and

(C) In any case where an incumbent has filed notice of candidacy and paid the prescribed qualifying fee in a nonpartisan election to succeed himself or herself in office but withdraws as a candidate for such office prior to the close of the applicable qualifying period prescribed in this paragraph, qualifying for candidates other than such incumbent shall be reopened at 9:00 A.M. on the Monday next following the close of the preceding qualifying period and shall cease at 5:00 P.M. on the Tuesday immediately following such reopening, notwithstanding the fact that any such days may be legal holidays;

(2) All political body and independent candidates shall file their notice of candidacy and pay the prescribed qualifying fee by the date prescribed in this paragraph in order to be eligible to have their names placed on the general election ballot by the Secretary of State or election superintendent, as the case may be, in the following manner:

(A) Each candidate for federal or state office, or his or her agent, desiring to have his or her name placed on the general election ballot shall file a notice of his or her candidacy, giving his or her name, residence address, and the office he or she is seeking, in the office of the Secretary of State either during the period beginning at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such election and ending at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M. on the last Monday in July immediately prior to the election and ending at 12:00 Noon on the Friday following the last Monday in July, notwithstanding the fact that any such days may be legal holidays; and

(B) Each candidate for a county office, or his or her agent, desiring to have his or her name placed on the general election ballot shall file notice of his or her candidacy in the office of the superintendent of his or her county either during the period beginning at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such election and ending at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M. on the last Monday in July immediately prior to the election and ending at 12:00 Noon on the Friday following the last Monday in July, notwithstanding the fact that any such days may be legal holidays; and

(3) Candidates required to file nomination petitions under subsection (e) of this Code section shall file such petitions not earlier than 9:00 A.M. on the fourth Monday in July immediately prior to the general election and not later than 12:00 Noon on the first Monday in August immediately prior to the general election.

(j)(1) Notwithstanding any provision of law to the contrary, any elected public officer who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such public officer was elected.

(2) Where the giving of written notice of candidacy is required, any elected public officer who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate may, during the time such officer is on ordered military duty, be performed by an agent designated in writing by the absent public officer. (Ga. L. 1922, p. 97, § 3; Code 1933, § 34-1904; Ga. L. 1948, Ex. Sess., p. 3, § 1; Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1001, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 224, § 1; Ga. L. 1968, p. 826, § 1; Ga. L. 1968, p. 858, § 1; Ga. L. 1968, p. 871, § 5; Ga. L. 1969, p. 329, § 8B; Code 1933, § 34-1002, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1971, p. 602, § 2; Ga. L. 1977, p. 1053, § 3; Ga. L. 1978, p. 1004, § 16; Ga. L. 1979, p. 955, § 4; Ga. L. 1981, p. 1718, §§ 4, 11; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1983, p. 884, § 6-5; Ga. L. 1983, p. 930, § 3; Ga. L. 1983, p. 1190, § 4; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 780, § 1; Ga. L. 1984, p. 1038, § 1; Ga. L. 1985, p. 496, § 3; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 890, § 2; Ga. L. 1987, p. 647, § 1; Ga. L. 1987, p. 1360, § 5; Ga. L.



1989, p. 643, § 2; Ga. L. 1990, p. 243, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 1406, § 2; Ga. L. 1995, p. 1027, § 3; Ga. L. 1996, p. 145, § 1; Ga. L. 1997, p. 590, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 23, § 1; Ga. L. 1999, p. 52, § 5; Ga. L. 2001, p. 269, § 5; Ga. L. 2001, Ex. Sess., p. 325, § 2; Ga. L. 2002, p. 437, § 1; Ga. L. 2003, p. 517, § 11; Ga. L. 2005, p. 253, §§ 13, 14/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2008, p. 781, § 6/HB 1112; Ga. L. 2009, p. 311, § 2/HB 156; Ga. L. 2011, p. 678, § 1/HB 158; Ga. L. 2011, p. 683, § 2A/SB 82; Ga. L. 2012, p. 995, § 5/SB 92.)

**The 2009 amendment**, effective April 30, 2009, added subsection (j).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, substituted “April” for “June” in paragraphs (c)(1) and (c)(2); and substituted “third Wednesday in June” for “last Monday in July” in subparagraphs (i)(1)(A) and (i)(1)(B). The second 2011 amendment, effective July 1, 2011, substituted “at the same time as candidates for party nomination in the general primary as provided in paragraph (1) of subsection (c) of Code Section 21-2-153” for “no earlier than 9:00 A.M. on the last Monday in July immediately prior to the election and no later than 12:00 Noon on the Friday following the last Monday in July” in subparagraphs (i)(1)(A) and (B). See editor’s note for applicability. See the Code Commission note regarding the effect of these amendments.

**The 2012 amendment**, effective May 2, 2012, deleted “and” at the end of paragraph (c)(1); substituted a semicolon for a period at the end of paragraph (c)(2); added paragraphs (c)(3) and (c)(4); in paragraph (d)(1), substituted “either during the period beginning at 9:00 A.M. on the fourth Monday in April immediately prior to the election and ending at 12:00 Noon on the Friday following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00” for “no earlier than 9:00”, substituted “ending at 12:00” for “no later than 12:00”, and inserted “, notwithstanding the fact that any such days may be legal holidays.”; in paragraph (d)(2), substituted “either during the period beginning at 9:00 A.M. on the fourth Monday in April immediately prior to the election and ending at 12:00 Noon on the Friday

following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M.” for “no earlier than 9:00 A.M.”, substituted “ending at 12:00” for “no later than 12:00”, and inserted “, notwithstanding the fact that any such days may be legal holidays.”; in paragraph (e)(3), substituted “himself or herself” for “such incumbent if, prior to the election in which such incumbent was originally elected to the office for which such incumbent seeks reelection, such incumbent filed a notice of candidacy and a nomination petition as required by this chapter”; in paragraph (h)(2), added the last sentence and added subparagraphs (h)(2)(A) through (h)(2)(D); rewrote paragraph (h)(3); in paragraph (i)(1), deleted “and” from the end of subparagraph (i)(1)(A), added “and” at the end of subparagraph (i)(1)(B), and added subparagraph (i)(1)(C); and, in subparagraphs (i)(2)(A) and (i)(2)(B), substituted “either during the period beginning at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such election and ending at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May, notwithstanding the fact that any such days may be legal holidays, or during the period beginning at 9:00 A.M.” for “no earlier than 9:00 A.M.”, substituted “ending at 12:00” for “no later than 12:00”, and inserted “, notwithstanding the fact that any such days may be legal holidays” near the end.

**Cross references.** — Qualifying in absentia for magistrates serving on active duty, § 15-10-20.1.

**Code Commission notes.** — Pursuant to Code Section 28-9-3, in 2011, the

amendment of subparagraphs (i)(1)(A) and (i)(1)(B) of this Code section by Ga. L. 2011, p. 678, § 1, was treated as impliedly repealed and superseded by Ga. L. 2011, p. 683, § 2A, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor's notes.** — Ga. L. 2011, p. 683, § 21A, not codified by the General Assembly, provides, in part that: "Section 2A of this Act shall become effective on July 1, 2011, only if House Bill 158 is passed by

the General Assembly during the 2011 regular session and is approved by the Governor or becomes law without such approval. Otherwise, Section 2A shall be repealed by operation of law on such date and shall be of no force and effect." House Bill 158 was Ga. L. 2011, p. 678, which was approved on May 13, 2011.

**Administrative rules and regulations.** — Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Ballots, Sec. 183-1-11-.02.

## JUDICIAL DECISIONS

**Sufficiency of evidence for making false statements in filing for candidacy for political office.** — In a case in which defendant appealed a conviction for false swearing, in violation of O.C.G.A. § 16-10-71(a), challenging the sufficiency of the evidence, the state failed to prove that defendant had the requisite criminal intent to support the conviction when defendant signed a declaration of candidacy for county commissioner as set forth in O.C.G.A. §§ 21-2-132 and 21-2-153. Pursuant to O.C.G.A. § 17-7-95(c), a judgment imposing a sentence following a plea

of nolo contendere was considered a conviction for some purposes; however, such a conviction did not disqualify defendant from holding public office or otherwise deprive defendant of any civil or political rights, and there was no evidence that defendant intended to deceive the election board or the voters, as defendant believed that the 1986 nolo contendere conviction to a charge of aggravated assault was generally known in the county. *Spillers v. State*, 299 Ga. App. 854, 683 S.E.2d 903 (2009).

### **21-2-133. Giving notice of intent of write-in candidacy; filing of affidavit; limitations on candidacy; certification of candidates.**

(a) No person elected on a write-in vote shall be eligible to hold office unless notice of his or her intention of candidacy was filed and published no earlier than January 1 and no later than the Tuesday after the first Monday in September prior to the election for county, state, and federal elections; no later than seven days after the close of the qualifying period for nonpartisan elections in the case of nonpartisan elections for state or county offices; no later than seven days after the close of the municipal qualifying period for municipal elections in the case of a general election; or no later than seven days after the close of the special election qualifying period for a special election by the person to be a write-in candidate or by some other person or group of persons qualified to vote in the subject election, as follows:

(1) In a state general or special election, notice shall be filed with the Secretary of State and published in a newspaper of general circulation in the state;

(2) In a general or special election of county officers, notice shall be filed with the superintendent of elections in the county in which he or she is to be a candidate and published in the official organ of the same county; or

(3) In a municipal general or special election, notice shall be filed with the superintendent and published in the official gazette of the municipality holding the election.

(b) In addition to the requirements contained in subsection (a) of this Code section, the person or persons giving notice of intention of candidacy for a write-in candidate shall also file, with the appropriate official specified in paragraph (1), (2), or (3) of subsection (a) of this Code section, a copy of the notice as published with an affidavit stating that the notice has been published and including the name of the newspaper and the date of publication, not later than the fifth day after the deadline for filing and publishing such notice. The affidavit may be made by the person giving notice of intention of candidacy or by the publisher of the newspaper in which the notice was published or by an employee of the newspaper designated by the publisher.

(c) No person shall be eligible as a write-in candidate in a special or general primary, a special or general primary runoff, or in a special or general election runoff.

(d) No person shall be eligible as a write-in candidate in a general or special election if such person was a candidate for nomination or election to the same office in the immediately preceding primary.

(e)(1) The Secretary of State shall certify and transmit to the election superintendent of each county affected within five days following the deadline for the submission by write-in candidates of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the Secretary of State for such general or special election.

(2) The county election superintendent shall certify within five days following the deadline for the submission by write-in candidates for county offices of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the county election superintendent for county offices for such general or special election.

(3) The municipal election superintendent shall certify within five days following the deadline for the submission by write-in candidates for municipal offices of the notice and documentation required by this Code section to be a write-in candidate in a general or special election



the names of all persons who have filed notices of intention to be write-in candidates with the municipal election superintendent for municipal offices for such general or special election. (Code 1933, § 34-1017, enacted by Ga. L. 1978, p. 1004, § 17; Ga. L. 1979, p. 963, § 1; Ga. L. 1987, p. 417, § 1; Ga. L. 1987, p. 1360, § 6; Ga. L. 1989, p. 682, § 1; Ga. L. 1997, p. 590, § 9; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 6; Ga. L. 2001, p. 230, § 5; Ga. L. 2001, p. 269, § 6; Ga. L. 2001, Ex. Sess., p. 325, § 3; Ga. L. 2002, p. 437, § 1; Ga. L. 2005, p. 253, § 15/HB 244; Ga. L. 2011, p. 678, § 2/HB 158; Ga. L. 2012, p. 995, § 6/SB 92.)

**The 2011 amendment**, effective July 1, 2011, inserted “no later than seven days after the close of the qualifying period for nonpartisan elections in the case of nonpartisan elections for state or county offices;” near the middle of the introductory paragraph of subsection (a).

**The 2012 amendment**, effective July 1, 2012, rewrote the previously existing provisions of subsection (e) as present paragraph (e)(1) and added paragraphs (e)(2) and (e)(3).

**21-2-134. Withdrawal, death, or disqualification of candidate for office; return of qualifying fee; nomination certificate.**

(a)(1) A candidate nominated at any primary election or nominated by means other than a primary may withdraw as a candidate at the ensuing general election by filing a notarized affidavit of withdrawal with the Secretary of State, if nominated for a state office; the county superintendent, if nominated for a county office; or the municipal superintendent, if nominated for a municipal office. If the ballots have been printed, the Secretary of State, the county superintendent, or the municipal superintendent may reprint the ballots to omit the name of the withdrawn candidate. All votes cast for the withdrawn candidate shall be void and shall not be counted. Prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted. No vacancy on the ballot for a general election or for a nonpartisan election shall be filled except by reason of the death or disqualification of a candidate or the withdrawal of a candidate as provided in paragraph (2) of subsection (b) of this Code section.

(2) A candidate in a general or special primary may withdraw as a candidate after qualifying but prior to the date of the general or special primary by filing a notarized affidavit of withdrawal with the Secretary of State, if qualifying for a state office; the county election superintendent, if qualifying for a county office; or the municipal superintendent, if qualifying for a municipal office. A candidate of a

political body or an independent candidate in a general or special election may withdraw as a candidate after qualifying but prior to the date of the general or special election by filing a notarized affidavit of withdrawal with the Secretary of State, if qualifying for a state office; the county election superintendent, if qualifying for a county office; or the municipal superintendent, if qualifying for a municipal office. If the ballots have been printed, the Secretary of State, the county election superintendent, or the municipal superintendent may reprint the ballots to omit the name of the withdrawn candidate. All votes cast for the withdrawn candidate shall be void and shall not be counted. Prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted.

(b)(1) Any vacancy in any party nomination filled by a primary created by reason of the death or disqualification of a candidate occurring after nomination may be filled in the following manner:

(A) In the case of a public office to be filled by the vote of the electors of this entire state in which the vacancy occurs after nomination but at least ten days prior to the election to fill the public office sought by such candidate, the vacancy may be filled by a substitute nomination made by a convention composed of the delegates of the county executive committee of such party in each county of this state. Immediately upon such vacancy occurring, the state executive committee or a subcommittee thereof appointed for the purpose shall fix a time within six days of the occurrence of such vacancy; shall select and provide a convenient place for the holding of such a convention, which shall be open to the public; and shall give notice thereof to the chairperson and secretary of each county executive committee. Each county executive committee shall be entitled to select the number of delegates apportioned to it by the state executive committee; provided, however, that each county executive committee shall be entitled to select at least one delegate. Such apportionment of delegates among the counties shall be based substantially upon the population of this state according to the last United States decennial census or upon the number of votes cast within this state for the party's candidates for presidential electors in the last presidential election. A two-thirds' majority of the delegates of such county executive committees shall constitute a quorum for the transaction of business, and a majority of the delegates present while a quorum exists shall be sufficient to fill such nomination by a substitute nomination. Each delegate shall have one vote, and all votes taken shall be by a roll-call vote. The records of the convention shall be filed with the state executive committee. In the event such a vacancy in party nomination shall

occur during the ten days preceding the day of such an election, such vacancy may be filled by a substitute nomination made by the state executive committee or a subcommittee thereof appointed for that purpose;

(B) In the case of a public office for which a candidate must qualify with the state executive committee, except a public office to be filled by the vote of the electors of the entire state, the nomination may remain vacant or may be filled at the decision of the state executive committee of the party. The decision whether to fill such vacancy shall be made by the state executive committee by 4:00 P.M. on the next business day following the actual knowledge of the death or disqualification of the candidate. The decision of the state executive committee shall be immediately transmitted to the Secretary of State. If the Secretary of State has not been notified of the decision of the state executive committee by 4:30 P.M. on the next business day following the actual knowledge of the vacancy, it shall be conclusively presumed that the state executive committee has decided not to fill the vacancy. If the state executive committee decides not to fill the vacancy, the nomination shall remain vacant. If the state executive committee decides to fill the vacancy, the vacancy shall be filled by a substitute nomination made by the state executive committee or a subcommittee thereof appointed for that purpose;

(C) In the case of a public office for which a candidate must qualify with the county executive committee, the nomination may remain vacant or may be filled at the decision of the state executive committee of the party. The state executive committee or a subcommittee thereof may determine on its own whether to fill the vacancy but is authorized, though not required, to seek the recommendation of any of the following persons for the purpose of determining whether to fill the vacancy: the county executive committee, if any; persons from the area who are active in the party; persons who are present or former officials of the party; persons who presently hold political office or have sought political office as candidates of the party; or such other persons as the committee or subcommittee may desire to consult. The decision whether to fill such vacancy shall be made by the state executive committee by 4:00 P.M. on the next business day following the actual knowledge of the death or disqualification of the candidate. The decision of the state executive committee shall be immediately transmitted to the county superintendent. If the county superintendent has not been notified of the decision of the state executive committee by 4:30 P.M. on the next business day following the actual knowledge of the vacancy, it shall be conclusively presumed that the state executive committee has decided not to fill the



vacancy. If the state executive committee decides not to fill the vacancy, the nomination shall remain vacant. If the state executive committee decides to fill the vacancy, the vacancy shall be filled by a substitute nomination made by the state executive committee or a subcommittee thereof appointed for that purpose. The state executive committee or a subcommittee thereof may determine on its own who shall fill the vacancy as a substitute nominee but is authorized, though not required, to seek the recommendation of any of the following persons for the purpose of determining the most suitable substitute nomination: the county executive committee, if any; persons from the area who are active in the party; persons who are present or former officials of the party; persons who presently hold political office or have sought political office as candidates of the party; or such other persons as the committee or subcommittee may desire to consult; and

(D) In the case of a public office for which a candidate must qualify with the municipal executive committee, the nomination may remain vacant or may be filled at the decision of the municipal executive committee of the party. The decision whether to fill such vacancy shall be made by the municipal executive committee by 4:00 P.M. on the next business day following the actual knowledge of the death or disqualification of the candidate. The decision of the municipal executive committee shall be immediately transmitted to the municipal superintendent. If the municipal superintendent has not been notified of the decision of the municipal executive committee by 4:30 P.M. on the next business day following the actual knowledge of the vacancy, it shall be conclusively presumed that the municipal executive committee has decided not to fill the vacancy. If the municipal executive committee decides not to fill the vacancy, the nomination shall remain vacant. If the municipal executive committee decides to fill the vacancy, the vacancy shall be filled by a substitute nomination made by the municipal executive committee or a subcommittee thereof appointed for that purpose.

(2) Any vacancy which occurs in any party nomination filled by a primary and which is created by reason of the withdrawal of a candidate 60 or more days prior to the date of the election shall be filled as follows:

(A) By the person seeking nomination in such primary who received the second highest total of votes cast in such primary for that office, provided that such person received not less than 40 percent of the votes cast for that office; or

(B) In the event no person received the vote total required under subparagraph (A) of this paragraph, such vacancy shall be filled in the same manner as provided in subparagraph (A), (B), (C), or (D) of paragraph (1) of this subsection, as appropriate.

(3) Any vacancy which occurs in any party nomination filled by a primary and which is created by reason of the withdrawal of a candidate less than 60 days prior to the date of the election shall not be filled. If the ballots have been printed, the Secretary of State, the county superintendent, or the municipal superintendent may reprint the ballots to omit the name of the withdrawn candidate. All votes cast for the withdrawn candidate shall be void and shall not be counted. Prominent notices shall be posted in all polling places in which the name of the withdrawn candidate appears on the ballot stating that such candidate has withdrawn and that all votes cast for such withdrawn candidate shall be void and shall not be counted.

(c) Any vacancy occurring in any body nomination or party nomination filled by means other than by primary, by reason of the withdrawal, death, or disqualification of any candidate after nomination, may be filled by a substitute nomination made by such committee as is authorized by the rules and regulations of the party or body to make nominations in the event of vacancies on the party or body ticket.

(d) If the withdrawal, death, or disqualification of a candidate after nomination for any public office would at the time of such event result in there being no candidate for that office on the ballot in the general election, then the vacancy shall be filled by a special primary which shall be open only to the party of such deceased, withdrawn, or disqualified candidate and the office shall be filled by a special election as provided in Code Section 21-2-540.

(e) The qualifying fee shall be returned to the candidate in the event such candidate withdraws, dies, or is disqualified prior to the close of the qualifying period; however, after the close of the qualifying period, the qualifying fee shall not be returned to the candidate for any reason including withdrawal, death, or disqualification; provided, however, that, if such disqualification is the result of an error or negligence of the officer with whom such candidate qualified and not the result of any action of the candidate and such error or negligence is verified in writing by the Secretary of State, such fee may be refunded to the candidate.

(f) Upon the making of any such substitute nomination, in the manner prescribed in subsection (b) or (c) of this Code section, it shall be the duty of the chairperson and secretary of the convention or committee making the nomination to file with the Secretary of State or with the superintendent, as the case may be, a nomination certificate which shall be signed by such chairperson and secretary. Every such certificate of nomination shall be sworn to by the chairperson and secretary before an officer qualified to administer oaths. (Code 1933, § 34-1003, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 6; Ga. L. 1969, p. 329, §§ 9, 10; Ga. L. 1970, p. 347, § 13; Ga. L.

1978, p. 781, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1985, p. 1430, § 1; Ga. L. 1987, p. 1360, § 7; Ga. L. 1989, p. 643, § 3; Ga. L. 1994, p. 1406, § 3; Ga. L. 1995, p. 408, § 1; Ga. L. 1996, p. 26, § 1; Ga. L. 1997, p. 590, § 10; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 2001, p. 269, § 7; Ga. L. 2005, p. 253, § 16/HB 244; Ga. L. 2008, p. 781, § 7/HB 1112; Ga. L. 2012, p. 995, § 7/SB 92.)

**The 2012 amendment**, effective July 1, 2012, added “; provided, however, that, if such disqualification is the result of an error or negligence of the officer with whom such candidate qualified and not

the result of any action of the candidate and such error or negligence is verified in writing by the Secretary of State, such fee may be refunded to the candidate” at the end of subsection (e).

## 21-2-138. Nonpartisan elections for judicial offices.

The names of all candidates who have qualified with the Secretary of State for the office of judge of a superior court, Judge of the Court of Appeals, or Justice of the Supreme Court of this state and the names of all candidates who have qualified with the election superintendent for the office of judge of a state court shall be placed on the ballot in a nonpartisan election to be held and conducted jointly with the general primary in each even-numbered year. No candidates for any such office shall be nominated by a political party or by a petition as a candidate of a political body or as an independent candidate. Candidates for any such office shall have their names placed on the nonpartisan portion of each ballot by complying with the requirements prescribed in Code Section 21-2-132 specifically related to such nonpartisan candidates and by paying the requisite qualifying fees as prescribed in Code Section 21-2-131. Candidates shall be listed on the official ballot in a nonpartisan election as provided in Code Sections 21-2-284.1 and 21-2-285.1, respectively. Except as otherwise specified in this chapter, the procedures to be employed in conducting the nonpartisan election of judges of state courts, judges of superior courts, Judges of the Court of Appeals, and Justices of the Supreme Court shall conform as nearly as practicable to the procedures governing general elections; and such general election procedures as are necessary to complete this nonpartisan election process shall be adopted in a manner consistent with such nonpartisan elections. (Code 1933, § 34-1016, enacted by Ga. L. 1975, p. 1251, § 1; Ga. L. 1983, p. 1190, § 6; Ga. L. 1984, p. 133, § 1; Ga. L. 1984, p. 1490, § 7; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 9; Ga. L. 2005, p. 253, § 17/HB 244; Ga. L. 2011, p. 678, § 3/HB 158.)

**The 2011 amendment**, effective July 1, 2011, substituted “general primary” for

“general election” near the end of the first sentence of this Code section.



**21-2-139. (For effective date, see note) Nonpartisan elections authorized; conduct.**

(a) (For effective date, see note) Notwithstanding any other provisions of this chapter to the contrary, the General Assembly may provide by local Act for the election in nonpartisan elections of candidates to fill county judicial offices, offices of local school boards, and offices of consolidated governments which are filled by the vote of the electors of said county or political subdivision. Except as otherwise provided in this Code section, the procedures to be employed in such nonpartisan elections shall conform as nearly as practicable to the procedures governing nonpartisan elections as provided in this chapter. Except as otherwise provided in this Code section, the election procedures established by any existing local law which provides for the nonpartisan election of candidates to fill county offices shall conform to the general procedures governing nonpartisan elections as provided in this chapter, and such nonpartisan elections shall be conducted in accordance with the applicable provisions of this chapter, notwithstanding the provisions of any existing local law. For those offices for which the General Assembly, pursuant to this Code section, provided by local Act for election in nonpartisan primaries and elections, such offices shall no longer require nonpartisan primaries. Such officers shall be elected in nonpartisan elections held and conducted in conjunction with the general primary in even-numbered years in accordance with this chapter without a prior nonpartisan primary. This Code section shall apply to all nonpartisan elections for members of consolidated governments. All nonpartisan elections for members of consolidated governments shall be governed by the provisions of this Code section and shall be considered county elections and not municipal elections for the purposes of this Code section. Nonpartisan elections for municipal offices shall be conducted on the dates provided in the municipal charter.

(b) Either a political party, as defined in this chapter, or a nonpartisan municipal executive committee duly registered with the city clerk may conduct a municipal primary for the purpose of electing its own officials or nominating candidates for municipal elections. Every primary held for such purpose shall be presided over and conducted in the manner prescribed by the rules and regulations of such party or nonpartisan municipal executive committee, not inconsistent with the law and the rules and regulations of the State Election Board; provided, however, that all such primaries must be conducted in such manner as to guarantee the secrecy of the ballot.

(c) Municipalities may provide by their charter or by ordinance that no political party shall conduct primaries for the purpose of nominating candidates for municipal elections; provided, however, that the existing

provisions of any charter or ordinance prohibiting primaries by political parties shall not be repealed by this subsection. (Code 1981, § 21-2-139, enacted by Ga. L. 1983, p. 1190, § 7; Ga. L. 1985, p. 496, § 4; Ga. L. 1994, p. 131, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 10; Ga. L. 2005, p. 253, § 18/HB 244; Ga. L. 2011, p. 678, § 4/HB 158; Ga. L. 2012, p. 995, § 9/SB 92.)

**Delayed effective date.** — Subsection (a), as set out above, becomes effective January 1, 2013. For version of subsection (a) in effect until January 1, 2013, see the 2012 amendment note.

**The 2011 amendment,** effective July 1, 2011, substituted “in conjunction with the general primary in even-numbered years” for “in conjunction with the November general election” in the next-to-last sentence in subsection (a).

**The 2012 amendment** added the sixth and seventh sentences in subsection (a). See editor’s note for effective date.

**Editor’s notes.** — Ga. L. 2012, p. 995, § 45/SB 92, not codified by the General Assembly, provides that: “Section 9 of this Act is not intended by the General Assembly to change the effect of existing law but

only to clarify the intent of the General Assembly in enacting the original legislation.”

Ga. L. 2012, p. 995, § 46(b)/SB 92, not codified by the General Assembly, provides that: “Section 9 of this Act shall become effective on the first date upon which candidates may begin qualifying for the general primary in 2012; provided, however, that if implementation of Section 9 is not permissible on such date under the federal Voting Rights Act of 1965, as amended, then Section 9 shall become effective on January 1, 2013.”

**Administrative rules and regulations.** — Ballot secrecy for handicapped persons, Official Compilation of the Rules and Regulations of the State of Georgia, Ballots, Sec. 183-1-11-.01.

## PART 2

### POLITICAL PARTY AND NONPARTISAN PRIMARIES

#### 21-2-150. Date of general primary; conflicting with political convention.

(a) Whenever any political party holds a primary to nominate candidates for public offices to be filled in the ensuing November election, such primary shall be held on the third Tuesday in July in each even-numbered year or, in the case of municipalities, on the third Tuesday in July in each odd-numbered year, except as provided in subsection (b) of this Code section.

(b)(1) Whenever the primary occurs during the same week of the national convention of either the political party whose candidates received the highest number of votes or the political party whose candidates received the next highest number of votes in the last presidential election, the general primary shall be conducted on the second Tuesday in July of such year. This paragraph shall not apply unless the date of the convention of the political party is announced by the political party prior to April 1 of the year in which the general primary is conducted.

(2) For general primaries held in the even-numbered year immediately following the official release of the United States decennial census data to the states for the purpose of redistricting of the legislatures and the United States House of Representatives, the general primary shall be conducted on the last Tuesday in July. (Ga. L. 1953, Jan.-Feb. Sess., p. 244, § 8; Ga. L. 1953, Nov.-Dec. Sess., p. 335, § 2; Ga. L. 1961, p. 432, § 1; Ga. L. 1962, p. 15, § 1; Code 1933, § 34-801, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1971, p. 602, § 1; Ga. L. 1980, p. 1256, § 2; Ga. L. 1983, p. 1190, § 8; Ga. L. 1984, p. 133, § 1; Ga. L. 1989, p. 643, § 4; Ga. L. 1996, p. 101, § 1; Ga. L. 1997, p. 590, § 11; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 11; Ga. L. 2001, Ex. Sess., p. 325, § 6; Ga. L. 2011, p. 535, § 1/HB 302.)

**The 2011 amendment**, effective July 1, 2011, substituted “last Tuesday in July” for “next-to-last Tuesday in August” at the end of paragraph (b)(2).

### 21-2-151. Conduct of political party primaries.

(a) A political party shall nominate its candidates for public office in a primary. Except for substitute nominations as provided in Code Section 21-2-134 and nomination of presidential electors, all nominees of a political party for public office shall be nominated in the primary preceding the general election in which the candidates’ names will be listed on the ballot.

(b) The primary held for such purposes shall be conducted by the superintendent in the same manner as prescribed by law and by rules and regulations of the State Election Board and the superintendent for general elections. Primaries of all political parties shall be conducted jointly. (Code 1933, § 34-1005, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1004, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1983, p. 1190, § 9; Ga. L. 1984, p. 133, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 12; Ga. L. 2005, p. 253, § 19/HB 244; Ga. L. 2012, p. 995, § 8/SB 92.)

**The 2012 amendment**, effective July 1, 2012, deleted “may elect its officials and” following “A political party” in the first sentence of subsection (a).

### 21-2-152. Conduct of primaries generally; run-off primary.

(a) Primaries shall be held and conducted in all respects in accordance with this chapter relating to general elections and the provisions of this chapter relating to general elections shall apply thereto, insofar as practicable and not inconsistent with any other provisions of this chapter. All such primaries shall be conducted in each precinct by the poll officers, by the use of the same equipment and facilities, so far as practicable, as are used for such general elections.



(b) A political party, in nominating a candidate for public office in a municipal primary, may also nominate persons to serve as poll officers for such primaries, and the superintendent shall consider such nominations but shall have discretion to appoint poll officers for each polling place in each precinct.

(c) A run-off primary shall be a continuation of the primary and only persons who were entitled to vote in the primary shall be entitled to vote therein; and only those votes cast for the persons designated for the runoff shall be counted in the tabulation and canvass of the votes cast. Any elector who votes in the primary of one party shall not be eligible to vote in a primary runoff of any other party other than a primary runoff of the party in whose primary such elector voted. (Code 1933, § 34-1005, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1008, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 3/SB 82.)

**The 2011 amendment**, effective July 1, 2011, added subsection (c).

**21-2-153. Qualification of candidates for party nomination in a state or county primary; posting of list of all qualified candidates; filing of affidavit with political party by each qualifying candidate; performance of military service does not create vacancy.**

(a) A candidate for any party nomination in a state or county primary may qualify by either of the two following methods:

(1) Payment of a qualifying fee pursuant to Code Section 21-2-131;  
or

(2)(A) The submission of a pauper's affidavit by any candidate who has filed a qualifying petition as provided for in subsection (a.1) of this Code section, by which the candidate under oath affirms his or her poverty and his or her resulting inability to pay the qualifying fee otherwise required. The form of the affidavit shall be prescribed by the Secretary of State and shall include a financial statement which lists the total income, assets, liabilities, and other relevant financial information of the candidate and shall indicate on its face that the candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The affidavit shall contain an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required. The following warning shall be printed on the affidavit form prepared by the Secretary of State, to wit: "WARNING: Any person knowingly making any false statement on this affidavit commits the offense of false swearing and shall be guilty of a felony." The name of any candidate who

subscribes and swears to an oath that such candidate has neither the assets nor the income to pay the qualifying fee otherwise required shall be placed on the ballot by the Secretary of State or election superintendent, as the case may be.

(B) If a candidate seeks to qualify for a county or militia district office, the pauper's affidavit and financial statement shall be presented to the county political party; otherwise, the candidate shall file his or her pauper's affidavit and financial statement with the state political party.

(a.1) No candidate shall be authorized to file a pauper's affidavit in lieu of paying the qualifying fee otherwise required by this Code section and Code Section 21-2-131 unless such candidate has filed a qualifying petition which complies with the following requirements:

(1) A qualifying petition of a candidate seeking an office which is voted upon state wide shall be signed by a number of voters equal to one-fourth of 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. A qualifying petition of a candidate for any other office shall be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected. However, in the case of a candidate seeking an office for which there has never been an election or seeking an office in a newly constituted constituency, the percentage figure shall be computed on the total number of registered voters in the constituency who would have been qualified to vote for such office had the election been held at the last general election and the signers of such petition shall be registered and eligible to vote in the election at which such candidate seeks to be elected;

(2) Each person signing a qualifying petition shall declare therein that he or she is a duly qualified and registered elector of the state entitled to vote in the next election for the filling of the office sought by the candidate supported by the petition and shall add to his or her signature his or her residence address, giving municipality, if any, and county, with street and number, if any. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. A signature shall be stricken from the petition when the signer so requests prior to the presentation of the petition to the appropriate officer for filing, but such a request shall be disregarded if made after such presentation. Each sheet shall bear on the bottom or back thereof the affidavit of the circulator of such sheet, setting forth:

(A) His or her residence address, giving municipality with street and number, if any;

(B) That each signer manually signed his or her own name with full knowledge of the contents of the qualifying petition;

(C) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and

(D) That, to the best of the affiant's knowledge and belief, the signers are registered electors of this state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county named in the affidavit;

(3) A qualifying petition shall be in the form and manner determined by the Secretary of State and approved by the State Elections Board;

(4) No qualifying petition shall be circulated prior to 180 days before the last day on which such petition may be filed, and no signature shall be counted unless it was signed within 180 days of the last day for filing the same; and

(5) A qualifying petition shall not be amended or supplemented after its presentation to the appropriate officer for filing.

(b) Unless otherwise provided by law, all candidates for party nomination in a state or county primary shall qualify as such candidates in accordance with the procedural rules of their party; provided, however, that no person shall be prohibited from qualifying for such office if he or she:

(1) Meets the requirements of such procedural rules;

(2) Is eligible to hold the office which he or she seeks;

(3) Is not prohibited from being nominated or elected by provisions of Code Section 21-2-7 or 21-2-8; and

(4) If party rules so require, affirms his or her allegiance to his or her party by signing the following oath:

"I do hereby swear or affirm my allegiance to the (name of party) Party."

(c)(1)(A) In the case of a general state or county primary, the candidates or their agents shall commence qualifying at 9:00 A.M. on the fourth Monday in April immediately prior to the state or county primary and shall cease qualifying at 12:00 Noon on the Friday following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays.



(B) In the case of a general primary held in the even-numbered year immediately following the official release of the United States decennial census data to the states for the purpose of redistricting of the legislatures and the United States House of Representatives:

(i) The candidates or their agents for political party nomination to county offices shall commence qualifying at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such primary and shall cease qualifying at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May, notwithstanding the fact that any such days may be legal holidays; and

(ii) Candidates for political party nomination to federal and state offices in a general primary shall commence qualifying at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such primary and shall cease qualifying at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May, notwithstanding the fact that any such days may be legal holidays, and shall qualify in person or by their agents with their respective political party in the state capitol under such rules and regulations as the Secretary of State may promulgate. All qualifying for federal and state offices on the last day of the qualifying period shall be conducted in the chamber of the House of Representatives in the state capitol.

(C) In the case of a special primary, the candidate shall qualify no earlier than the date of the call for the special primary and no later than 25 days immediately prior to the date of such primary, and such qualifying period shall be open for a minimum of two and one-half days.

(D) In any case where an incumbent has qualified as a candidate to succeed himself or herself in office but withdraws as a candidate for such office prior to the close of the applicable qualifying period prescribed in this paragraph, qualifying for candidates other than such incumbent shall be reopened at 9:00 A.M. on the Monday next following the close of the preceding qualifying period and shall cease at 5:00 P.M. on the Tuesday immediately following such reopening, notwithstanding the fact that any such days may be legal holidays.

(2) If a political party has not designated at least 14 days immediately prior to the beginning of qualifying a party official in a county with whom the candidates of such party for county elective offices shall qualify, the election superintendent of the county shall qualify candidates on behalf of such party. The election superintendent shall

give notice in the legal organ of the county at least three days before the beginning of qualifying giving the dates, times, and location for qualifying candidates on behalf of such political party.

(d)(1) Within two hours after the qualifications have ceased, the county executive committee of each political party shall post at the office of the county election superintendent a list of all candidates who have qualified with such executive committee, and the state executive committee of each political party shall provide a list of all candidates who have qualified with such committee to the office of the Secretary of State. If the election superintendent qualifies the candidates for a political party in accordance with subsection (c) of this Code section, the election superintendent shall post at his or her office a list of all the candidates who have qualified with such superintendent for such political party.

(2) Except as otherwise provided in Code Section 21-2-154, it shall be unlawful for any person to add or remove any candidates from either of the lists provided for in paragraph (1) of this subsection following the posting of such lists unless such candidates have died, withdrawn, or been disqualified. Any person who violates this paragraph shall be guilty of a misdemeanor.

(e) Each candidate for party nomination described in subsection (a) of this Code section shall file an affidavit with the political party at the time of his or her qualifying stating:

(1) His or her full name and the name as the candidate desires it to be listed on the ballot. The surname of the candidate shall be the surname of the candidate as it appears on the candidate's voter registration card. After such name is certified by the political party to the Secretary of State or the election superintendent, the form of such name shall not be changed during the primary and election for which such affidavit is submitted;

(2) His or her residence, with street and number, if any, and his or her post office address;

(3) His or her profession, business, or occupation, if any;

(4) The name of his or her precinct;

(5) That he or she is an elector of the county of his or her residence eligible to vote in the primary election in which he or she is a candidate for nomination;

(6) The name of the office he or she is seeking;

(7) That he or she is eligible to hold such office;

(8) That the candidate has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of pri-

mary or election laws, malfeasance in office, or felony involving moral turpitude under the laws of this state or any other state or of the United States, or that the candidate's civil rights have been restored and that at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude;

(9) That he or she will not knowingly violate this chapter or rules or regulations adopted under this chapter; and

(10) Any other information as may be determined by the Secretary of State to be necessary to comply with federal and state law.

(f) Candidates for the office of presidential elector or their agents who have been nominated in accordance with the rules of a political party shall qualify beginning at 9:00 A.M. on the fourth Monday in April in the year in which a presidential election shall be held and shall cease qualifying at 12:00 Noon on the Friday immediately following the fourth Monday in April, notwithstanding the fact that any such days may be legal holidays; provided, however, that, for presidential elections held in the even-numbered year immediately following the official release of the United States decennial census data to the states for the purpose of redistricting of the legislatures and the United States House of Representatives, candidates for the office of presidential elector who have been nominated in accordance with the rules of a political party shall commence qualifying beginning at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such election and shall cease qualifying at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May, notwithstanding the fact that any such days may be legal holidays, and shall qualify in person or by their agents with their respective political party in the state capitol under such rules and regulations as the Secretary of State may promulgate.

(g)(1) Notwithstanding any provision of law to the contrary, any elected public officer who is performing ordered military duty, as defined in Code Section 38-2-279, shall be eligible for reelection in any primary or general election which may be held to elect a successor for the next term of office, and may qualify in absentia as a candidate for reelection to such office. The performance of ordered military duty shall not create a vacancy in such office during the term for which such public officer was elected.

(2) Where the giving of written notice of candidacy is required, any elected public officer who is performing ordered military duty may deliver such notice by mail, agent, or messenger to the proper elections official. Any other act required by law of a candidate may, during the time such officer is on ordered military duty, be performed



by an agent designated in writing by the absent public officer. (Code 1933, § 34-1006, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1966, p. 501, § 1; Ga. L. 1969, p. 329, § 11; Code 1933, § 34-1005, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1974, p. 4, § 1; Ga. L. 1975, p. 575, § 1; Ga. L. 1976, p. 205, § 1; Ga. L. 1977, p. 1053, § 4; Ga. L. 1978, p. 1004, § 18; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 930, § 4; Ga. L. 1984, p. 1038, § 2; Ga. L. 1985, p. 206, § 1; Ga. L. 1985, p. 496, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 647, § 2; Ga. L. 1987, p. 1360, § 8; Ga. L. 1989, p. 643, § 5; Ga. L. 1989, p. 903, § 1; Ga. L. 1990, p. 243, § 2; Ga. L. 1992, p. 2510, § 2; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 617, § 5; Ga. L. 1994, p. 1406, §§ 4, 5; Ga. L. 1996, p. 145, § 2; Ga. L. 1997, p. 590, § 12; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 9; Ga. L. 2001, Ex. Sess., p. 325, § 7; Ga. L. 2003, p. 517, §§ 12-14; Ga. L. 2005, p. 253, § 20/HB 244; Ga. L. 2009, p. 311, § 3/HB 156; Ga. L. 2011, p. 535, § 2/HB 302; Ga. L. 2011, p. 683, § 4/SB 82; Ga. L. 2012, p. 995, § 10/SB 92.)

**The 2009 amendment**, effective April 30, 2009, added subsection (g).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, in paragraph (c)(1) and in subsection (f), substituted “Wednesday immediately following the third Monday in May” for “third Wednesday in June” throughout and inserted “immediately” following “Friday”; inserted “immediately” in paragraph (c)(2). The second 2011 amendment, effective July 1, 2011, in paragraph (d)(1), in the first sentence, substituted “office of the county election superintendent” for “county courthouse”, substituted “provide” for “post”, and substituted “to the office of the Secretary of State” for “at the

courthouse of the county in which such executive committee’s office is located”, and, in the second sentence, substituted “his or her office” for “the county courthouse”.

**The 2012 amendment**, effective May 2, 2012, in paragraph (a.1)(2), added the last sentence and added subparagraphs (a.1)(2)(A) through (a.1)(2)(D); rewrote paragraph (a.1)(3); rewrote subsection (c), inserting subparagraph and division designations; and adding subparagraph (c)(1)(D).

**Cross references.** — Qualifying in absentia for magistrates serving on active duty, § 15-10-20.1.

## JUDICIAL DECISIONS

**Sufficiency of evidence for making false statements in filing for candidacy for political office.** — In a case in which defendant appealed a conviction for false swearing, in violation of O.C.G.A. § 16-10-71(a), challenging the sufficiency of the evidence, the state failed to prove that defendant had the requisite criminal intent to support the conviction when defendant signed a declarations of candidacy for county commissioner as set forth in O.C.G.A. §§ 21-2-132 and 21-2-153. Pur-

suant to O.C.G.A. § 17-7-95(c), a judgment imposing a sentence following a plea of nolo contendere was considered a conviction for some purposes; however, such a conviction did not disqualify defendant from holding public office or otherwise deprive defendant of any civil or political rights, and there was no evidence that defendant intended to deceive the election board or the voters, as defendant believed that the 1986 nolo contendere conviction to a charge of aggravated assault was

generally known in the county. *Spillers v. State*, 299 Ga. App. 854, 683 S.E.2d 903 (2009).

**21-2-155. Reopening of qualification for office in event of candidate’s death or withdrawal of incumbent who qualified as candidate prior to political party primary.**

In the event of the death of a candidate or the withdrawal of an incumbent who qualified as a candidate to succeed himself or herself in office, either of which occurs after the close of qualifying for candidates for such office but prior to the date of a political party primary, the state executive committee or other committee of the party authorized by party rule or, in the case of a municipal election, the municipal executive committee may reopen qualification for the office sought by the deceased or withdrawn candidate for a period of not less than one nor more than three days. (Code 1933, § 34-1007, enacted by Ga. L. 1970, p. 347, § 13; Ga. L. 1983, p. 1190, § 10; Ga. L. 1985, p. 1430, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 13; Ga. L. 2012, p. 995, § 11/SB 92.)

**The 2012 amendment**, effective May 2, 2012, inserted “or the withdrawal of an incumbent who qualified as a candidate to succeed himself or herself in office, either of which occurs after the close of qualifying for candidates for such office but” near the beginning and inserted “or withdrawn” near the end.

**21-2-157. Municipal nonpartisan primary; qualifying as a candidate; payment of expenses.**

**Administrative rules and regulations.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Dates of Primaries and Elections, Sec. 183-1-8-.01.

PART 3

NOMINATION AND QUALIFICATION OF INDEPENDENT CANDIDATES, CANDIDATES OF POLITICAL BODIES, AND PRESIDENTIAL ELECTORS

**21-2-170. Nomination of candidates by petition; form of petition; signatures; limitations as to circulation and amendment of petitions; listing of such candidates on ballots; charter or ordinance authorization.**

JUDICIAL DECISIONS

**Lack of notarization.** — County board of election (BOE) members were entitled to qualified immunity in their individual capacities against a candidate’s 42 U.S.C. § 1983 claims for the BOE’s challenge to the candidate’s nomination petition because a reasonable official would not have believed that compliance

with the requirements of O.C.G.A. § 21-2-171 in response to the facial deficiency of the candidate's petition constituted an unlawful action in violation of the candidate's rights; the petition did not comply with O.C.G.A. § 21-2-170 because it lacked the necessary notarization, ren-

dering it facially defective, and given this defect, § 21-2-171 required the BOE to disregard the non-conforming pages of the petition and authorized it to hold a hearing in connection therewith. *Johnson v. Randolph County*, 301 Ga. App. 265, 687 S.E.2d 223 (2009).

### RESEARCH REFERENCES

**ALR.** — Construction and Application of Elections Clause of United States Constitution, U.S. Const. Art. I, § 4, cl.1, and state Constitutional provisions concerning congressional elections, 34 ALR6th 643.

Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions, 40 ALR6th 317.

### **21-2-171. Examination of petitions; basis for grant or denial of filing; review and appeal of denial.**

(a) When any nomination petition is presented in the office of the Secretary of State or of any superintendent for filing within the period limited by this chapter, it shall be the duty of such officer to examine the same to the extent necessary to determine if it complies with the law. No candidate shall be qualified if such nomination petition:

- (1) Contains material errors or defects apparent on the face thereof;
- (2) Contains material alterations made after signing without the consent of the signers; or
- (3) Does not contain a sufficient number of signatures of registered voters as required by law.

The Secretary of State or any superintendent shall review the petition for compliance with the provisions of Code Section 21-2-170 and shall disregard any pages or signatures that are not in conformance with the provisions of that Code section. The Secretary of State or any superintendent may question the genuineness of any signature appearing on a petition or the qualification of any signer whose signature appears thereon and, if he or she shall thereupon find that any such signature is improper, such signature shall be disregarded in determining whether the petition contains a sufficient number of signatures as required by law. The invalidity of any sheet of a nomination petition shall not affect the validity of such petition if a sufficient petition remains after eliminating such invalid sheet.

(b) Upon the filing of a nomination petition, the officer with whom it is filed shall begin expeditiously to examine the petition to determine if it complies with the law. During such examination the officer shall have



the right to summon by subpoena on two days' notice and interrogate under oath the candidate named in the petition, any person who signed the petition, any person who executed or witnessed any affidavit or certificate accompanying the petition, or any other person who may have knowledge of any matter relevant to the examination. Such officer shall also have the right to subpoena on two days' notice any record relevant to the examination. No witness shall be compelled to attend if he or she should reside more than 100 miles from the place of hearing by the nearest practical route; provided, however, that the officer may compel the taking of his or her testimony by deposition in the county of the residence of the witness. The sheriff of any county, or his or her deputy, or agent of the officer shall serve all processes issued by the officer, or the same may be served by United States registered or certified mail or statutory overnight delivery; and the production of an appropriate return receipt issued by the United States post office or commercial delivery firm shall constitute prima-facie evidence of such service. In case of the refusal of any person subpoenaed to attend or testify, such fact shall be reported forthwith by the officer to the appropriate superior court, or to a judge thereof, and such court or judge shall order such witness to attend and testify; and, on failure or refusal to obey such order, such witness shall be dealt with as for contempt. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as now allowed and paid witnesses in civil actions in the superior court. The officer shall not be bound by technical rules of evidence in hearing such testimony. The testimony presented shall be stenographically recorded and made a part of the record of the examination. If the petition complies with the law, it shall be granted and the candidate named therein shall be notified in writing. If the petition fails to comply with the law, it shall be denied and the candidate named therein shall be notified of the cause for such denial by letter directed to his or her last known address. In neither case shall the petition be returned to the candidate.

(c) The decision of the officer denying a nomination petition may be reviewed by the superior court of the county containing the office of such officer upon an application for a writ of mandamus to compel the granting of such petition. The application for such writ of mandamus shall be made within five days of the time when the petitioner is notified of such decision. Upon the application being made, a judge of such court shall fix a time and place for hearing the matter in dispute as soon as practicable; and notice thereof shall be served with a copy of such application upon the officer with whom the nomination petition was filed and upon the petitioner. At the time so fixed the court, or any judge thereof assigned for the purpose, shall hear the case. If after such hearing the said court shall find that the decision of the officer was erroneous, it shall issue its mandate to the officer to correct his or her

decision and to grant the nomination petition. From any decision of the superior court an appeal may be taken within five days after the entry thereof to the Supreme Court. It shall be the duty of the Supreme Court to fix the hearing and to announce its decision within such period of time as will permit the name of the candidate affected by the court's decision to be printed on the ballot if the court should so determine. (Code 1933, § 34-1011, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 13; Ga. L. 1997, p. 590, § 14; Ga. L. 1998, p. 295, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 20, § 1; Ga. L. 2010, p. 914, § 6/HB 540.)

**The 2010 amendment**, effective July 1, 2010, substituted "No candidate shall be qualified if such nomination petition" for "No nomination petition shall be permitted to be filed if" at the beginning of

the second sentence in the introductory paragraph of subsection (a); substituted "Contains" for "It contains" in paragraphs (a)(1) and (a)(2); and substituted "Does" for "It does" in paragraph (a)(3).

### JUDICIAL DECISIONS

**Lack of notarization.** — County board of election (BOE) members were entitled to qualified immunity in their individual capacities against a candidate's 42 U.S.C. § 1983 claims for the BOE's challenge to the candidate's nomination petition because a reasonable official would not have believed that compliance with the requirements of O.C.G.A. § 21-2-171 in response to the facial deficiency of the candidate's petition constituted an unlawful action in violation of the candidate's rights; the petition did not comply with O.C.G.A. § 21-2-170 because it lacked the necessary notarization, rendering it facially defective, and given this defect, § 21-2-171 required the BOE to

disregard the non-conforming pages of the petition and authorized it to hold a hearing in connection therewith. *Johnson v. Randolph County*, 301 Ga. App. 265, 687 S.E.2d 223 (2009).

**Appeal of denial of nomination petition was moot.** — Regardless of the merits or lack thereof of the candidate's claims that the candidate's nomination petition was miscounted, improperly counted, or that there were irregularities in the process leading to the unlawful decision to keep the candidate off the November ballot, the candidate's present appeal was moot because the general election had already taken place. *Bodkin v. Bolia*, 285 Ga. 758, 684 S.E.2d 241 (2009).

### PART 4

#### NOMINATION OF CANDIDATES OF POLITICAL BODIES FOR STATE-WIDE PUBLIC OFFICE BY CONVENTION

### 21-2-182. Contents of petitions; signatures.

#### RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes regulating or proscribing payment in connection with

gathering signatures on nominating petitions for public office or initiative petitions, 40 ALR6th 317.

## ARTICLE 5

## PRESIDENTIAL PREFERENCE PRIMARY

**21-2-191. Parties entitled to hold primaries; dates; decision to elect delegates to presidential nominating convention in primary; qualifying periods for candidates for delegate.**

As provided in this article, a presidential preference primary shall be held in 2012 and every four years thereafter for each political party or body which has cast for its candidates for President and Vice President in the last presidential election more than 20 percent of the total vote cast for President and Vice President in this state, so that the electors may express their preference for one person to be the candidate for nomination by such person's party or body for the office of President of the United States; provided, however, that no elector shall vote in the primary of more than one political party or body in the same presidential preference primary. Such primary shall be held in each year in which a presidential election is to be conducted on a date selected by the Secretary of State which shall not be later than the second Tuesday in June in such year. The Secretary of State shall select such date no later than December 1 of the year immediately preceding such primary. A state political party or body may by rule choose to elect any portion of its delegates to that party's or body's presidential nominating convention in the primary; and, if a state political party or body chooses to elect any portion of its delegates, such state political party or body shall establish the qualifying period for those candidates for delegate and delegate alternate positions which are to be elected in the primary and for any party officials to be elected in the primary and shall also establish the date on which state and county party executive committees shall certify to the Secretary of State or the superintendent, as the case may be, the names of any such candidates who are to be elected in the primary; provided, however, that such dates shall not be later than 60 days preceding the date on which the presidential preference primary is to be held. (Code 1933, § 34-1002A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1974, p. 429, § 1; Ga. L. 1975, p. 1223, § 1; Ga. L. 1986, p. 220, § 1; Ga. L. 1992, p. 1, §§ 1, 1A; Ga. L. 1994, p. 1406, § 6; Ga. L. 1997, p. 590, § 18; Ga. L. 2007, p. 544, § 2/SB 194; Ga. L. 2011, p. 630, § 1/HB 454.)

**The 2011 amendment**, effective July 1, 2011, in the first sentence, substituted "2012" for "2008" near the beginning and substituted "Vice President in this state" for "Vice President in the state" near the middle, in the second sentence, substituted "in each year in which a presidential

election is to be conducted on a date selected by the Secretary of State which shall not be later than the second Tuesday in June in such year" for "on February 5, 2008, and on the first Tuesday in February every four years thereafter", added the third sentence, and, in the last sen-



tence, substituted “60 days preceding the date on which” for “November 1 of the year preceding the year in which” near the end of this Code section.

**21-2-193. List of names of candidates to appear on ballot; publication of list.**

On a date set by the Secretary of State, but not later than 60 days preceding the date on which a presidential preference primary is to be held, the state executive committee of each party which is to conduct a presidential preference primary shall submit to the Secretary of State a list of the names of the candidates of such party to appear on the presidential preference primary ballot. Such lists shall be published on the website of the Secretary of State during the fourth week immediately preceding the date on which the presidential preference primary is to be held. (Code 1933, § 34-1003A, enacted by Ga. L. 1973, p. 221, § 1; Ga. L. 1980, p. 5, § 1; Ga. L. 1987, p. 1360, § 10; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 1406, § 7; Ga. L. 1997, p. 590, § 19; Ga. L. 2007, p. 544, § 3/SB 194; Ga. L. 2011, p. 630, § 2/HB 454.)

**The 2011 amendment**, effective July 1, 2011, substituted the present provisions of this Code section for the former provisions, which read: “Not later than November 1 of the year preceding the year in which a presidential preference primary is to be held, the state executive committee of each party which is to conduct a presidential preference primary shall submit to the Secretary of State a

list of the names of the candidates of such party to appear on the presidential preference primary ballot. Such lists shall be published by the Secretary of State in a newspaper of general circulation in the state during the first week of December in the year immediately preceding the year in which the presidential preference primary is to be held.”

## ARTICLE 6

### REGISTRATION OF VOTERS

**21-2-212. County registrars; appointment; certification; term of service; vacancies; compensation and expenses of chief registrar, registrars, and other officers and employees; budget estimates.**

(a) Except in the case in which a county has a board of elections and registration, the judge of the superior court in each county or the senior judge in time of service in those counties having more than one judge shall appoint in accordance with this Code section, upon the recommendation of the grand jury of such county, not less than three nor more than five judicious, intelligent, and upright electors of such county as county registrars. The grand jury shall submit to the judge the names of a number of electors equal to twice the number of persons to be appointed and the appointment shall be made therefrom and shall be entered on the minutes of the court. When making such appointments

when appropriate, the judge will designate one of the registrars as chief registrar who shall serve as such during such registrar's term of office, and such designation shall likewise be entered on the minutes of the court. It shall be the duty of the clerk of the superior court to certify the appointments and designation to the Secretary of State within 30 days after the appointments and designation, and commissions shall be issued as for county officers. When certifying such names to the Secretary of State, the clerk of the superior court shall also list the addresses of the registrars. Except in the case in which the local Act creating a county board of elections and registration specifically provides for the appointment and removal by another authority, such judge will have the right to remove one or more of such registrars at any time for cause after notice and hearing. In case of the death, resignation, or removal of a registrar, the judge shall appoint a successor who shall serve until the next grand jury convenes, at which time the grand jury shall submit to the judge the names of two judicious, intelligent, and upright electors of such county; and the judge shall make an appointment from said list, such successor to serve the unexpired term of such registrar's predecessor in office. In the event the grand jury is in session at the time of any such death, removal, or resignation, such grand jury shall immediately submit the names of said electors to the judge for such appointment. Each such appointment or change in designation shall be entered on the minutes of the court and certified as provided in this Code section.

(b)(1) Except as otherwise provided in this subsection, appointees under this article shall serve for a term of four years and until their successors are appointed and qualified, except in the event of resignation or removal as provided in subsection (a) of this Code section. Their terms shall commence on July 1 and expire on June 30 four years thereafter.

(2) The first new grand jury which convenes in each county in the year 2013 shall submit to the judge the list of names as provided in subsection (a) of this Code section. From this list, the judge shall appoint two registrars to serve two-year terms of office and until their respective successors are appointed and qualified and not more than three registrars to serve four-year terms of office and until their respective successors are appointed and qualified. Thereafter, the first new grand jury which convenes in each county in each odd-numbered year shall submit to the judge a list of names equal to twice the number of registrars whose terms are to expire that year. From this list, the judge shall appoint successors to the registrars whose terms are expiring that year who shall then serve terms of office of four years and until their respective successors are selected and qualified.

(3) Such list of names shall be submitted to the judge, who shall appoint the registrars and designate the chief registrar, as needed,

prior to June 30. No appointment for a full term shall be made prior to January 1 of the year in which the appointee is to take office. If no such grand jury is convened or, if convened but failed to recommend, the judge shall appoint the registrars without the necessity of any recommendation. In the event that a registrar holds over beyond the end of the registrar's term of office due to the failure to have a successor timely appointed and qualified, the successor shall be appointed to serve the remainder of the term of office and shall not receive a new four-year term of office.

(c) The governing authority of each municipality shall appoint registrars as necessary, and the appointments shall be entered on the minutes of such governing authority. The municipal governing authority shall designate one of the registrars as chief registrar. The chief registrar will serve as such during such registrar's term of office, and such designation shall likewise be entered on the minutes of such governing authority. Such registrars shall serve at the pleasure of the municipal governing authority, and compensation of the registrars shall be fixed by such governing authority. Any registrar shall have the right to resign at any time by submitting a resignation to such governing authority. In the event of any such removal or resignation of a registrar, such registrar's duties and authority as such shall terminate instantly. Successors to resigned registrars shall be appointed by the municipal governing authority. Each appointment or change in designation shall be entered on the minutes of such governing authority and certified by the governing authority. The municipal governing authority may furnish such employees and facilities as it deems necessary for the operation of the office and the affairs of the registrars.

(d) The chief registrar shall be the chief administrative officer of the board of registrars and shall generally supervise and direct the administration of the affairs of the board of registrars. The chief registrar shall act as chairperson of the board of registrars and, as chief registrar, shall perform those functions normally devolving upon the chairperson. The board of registrars shall meet each month on a day selected by the chief registrar to transact the business of the board. The board shall also meet at other times as needed upon the call of the chief registrar or upon the request of two or more of the registrars. The chief registrar shall be compensated in an amount of not less than \$61.00 per day for each day of service on the business of the board of registrars. The other registrars shall be compensated in an amount of not less than \$48.00 per day for each day of service on the business of the board of registrars. In lieu of the per diem compensation provided for in this subsection, the chief registrar may be compensated in an amount not less than \$272.00 per month and the other registrars in an amount not less than \$242.00 per month. The per diem or monthly compensation, as the case may be, shall be fixed, subject to the limitations provided for in this subsection,



by the governing authority of each county and shall be paid from county funds. The compensation of other officers and employees appointed and employed under this article shall be fixed by the board of registrars with the approval of the governing authority of each county and shall be paid from county funds.

(e) If, within 90 days of the end of the term or the creation of a vacancy for a county registrar, an appointment is not made in accordance with subsection (a) of this Code section, the governing authority of the county shall appoint the county registrars in lieu of the judge of the superior court. The appointments shall be entered on the minutes of the county governing authority. The county governing authority shall designate one of the registrars as chief registrar, who shall serve as such during such registrar's term of office. Such designation shall likewise be entered on the minutes of such governing authority. It shall be the duty of the county governing authority to certify the appointments and designation to the Secretary of State and the clerk of the superior court within 30 days after such appointments and designation. In certifying such names to the Secretary of State and the clerk of the superior court, the county governing authority shall also list the addresses of the registrars. Such registrars shall serve for the term and in the manner set forth in subsection (a) of this Code section. Any registrar shall have the right to resign at any time by submitting a resignation to the clerk of the superior court. In the event of the death, resignation, or removal of any registrar, such registrar's duties and authority as such shall terminate instantly. Successors shall be appointed as set forth in subsection (a) of this Code section.

(f) The board of registrars of each county shall prepare annually a budget estimate in which it shall set forth an itemized list of its expenditures for the preceding two years and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and shall submit the same at the time and in the manner and form other county budget estimates are required to be filed. (Code 1981, § 21-2-212, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 1027, § 4; Ga. L. 1996, p. 145, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 902, § 15; Ga. L. 2005, p. 253, § 22/HB 244; Ga. L. 2010, p. 914, § 7/HB 540; Ga. L. 2011, p. 683, § 5/SB 82.)

**The 2010 amendment**, effective July 1, 2010, in subsection (a), substituted "appoint in accordance with this Code section" for "appoint quadrennially" in the first sentence, substituted "of a number of electors equal to twice the number of persons to be appointed and" for "of ten such electors and" in the second sentence, and inserted "when appropriate" in the third sentence; redesignated former sub-

section (b) as present paragraphs (b)(1) through (b)(3); substituted "Except as otherwise provided in this subsection, appointees" for "Appointees" at the beginning of paragraph (b)(1); in paragraph (b)(2), substituted "year 2013" for "year 1965, and each four years thereafter", in the first sentence, and added the second through fourth sentences; and, in paragraph (b)(3), in the first sentence, inserted

“of names” near the beginning, and “, as needed” near the end.

**The 2011 amendment**, effective July 1, 2011, in subsection (a), substituted “Except in the case in which a county has a board of elections and registration, the” for “The” at the beginning of the first sentence, and substituted “Except in the case in which the local Act creating a county board of elections and registration specifically provides for the appointment and removal by another authority, such” for “Such” at the beginning of the sixth sentence; and, in subsection (e), in the first sentence, substituted “If, within 90 days of the end of the term or the creation of a vacancy for a county registrar, an appointment is not made in accordance with subsection (a) of this Code section” for “Any other provision of this Code section to the contrary notwithstanding, in any county of this state having a population of more than 600,000 according to the United States decennial census of 1990 or any future such census”, in the fifth sentence, inserted “and the clerk of the superior court”, in the sixth sentence, inserted

“and the clerk of the superior court” and substituted “for the term and in the manner set forth in subsection (a) of this Code section” for “at the pleasure of the governing authority of the county, and the compensation of the registrars shall be fixed by the governing authority of the county”, in the seventh sentence, substituted “the clerk of the superior court” for “such governing authority”, in the last sentence, substituted “as set forth in subsection (a) of this Code section” for “by the county governing authority”, and deleted the former last three sentences, which read: “Each appointment or change in designation shall be entered on the minutes of such governing authority and certified as provided in this Code section. The first appointments in any such county under this article shall be made in the year 1965, and the persons appointed shall assume office July 1, 1965. The governing authorities of such counties may furnish such employees and facilities as they deem necessary for the operation of the office and affairs of the registrars.”

### JUDICIAL DECISIONS

**Cited in** Lewis v. O’Day, 284 Ga. 423, 667 S.E.2d 594 (2008).

#### **21-2-213. County deputy registrars; clerical help; appointment of county officer or employee as chief deputy registrar.**

**Administrative rules and regulations.** — Registration of electors, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.03.

#### **21-2-214. Qualifications of registrars and deputy registrars; prohibited political activities; oath of office; privilege from arrest; duties conducted in public.**

(a) Members of the board of registrars shall be electors of the state and county in which they serve, and any deputy registrars shall be electors of the state. All registrars shall be able to read, write, and speak the English language. Municipal registrars shall be registered Georgia voters and shall be able to read, write, and speak the English language. Registrars and deputy registrars shall have never been convicted of a felony involving moral turpitude unless such person’s civil rights have been restored and at least ten years have elapsed from

the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude and shall never have been convicted of a crime involving fraud, and the appointing authority shall be authorized to investigate the applicant's criminal history before making such appointment.

(b) The office of a member of a county or municipal board of registrars, a deputy registrar, member of a county or municipal board of elections or county or municipal board of elections and registration, or a member of a joint county-municipal board of elections or joint county-municipal board of elections and registration shall be vacated immediately upon such officer's qualifying for any nomination or office to be voted for at a primary or election or qualifying for any nomination or office or qualifying to have such officer's name placed on any primary or election ballot pursuant to Code Sections 21-2-132 and 21-2-153 or giving notice of such officer's intention of write-in candidacy; provided, however, that this Code section shall not apply to a chief deputy registrar who is also an elected public officer and who seeks to qualify for reelection to the public office such chief deputy registrar is presently holding. Nothing contained in this Code section shall cause the office of a member of a county or municipal board of registrars, deputy registrar, member of a county or municipal board of elections or county or municipal board of elections and registration, or a member of a joint county-municipal board of elections or joint county-municipal board of elections and registration to be vacated upon qualifying for or having such officer's name placed on the ballot or holding office in a political party or body or serving as a presidential elector.

(c) No member of a county or municipal board of registrars, deputy registrar, member of a county or municipal board of elections or county or municipal board of elections and registration, or a member of a joint county-municipal board of elections or joint county-municipal board of elections and registration, while conducting the duties of such person's office, shall engage in any political activity on behalf of a candidate, political party or body, or question, including, but not limited to, distributing campaign literature, engaging in any communication that advocates or criticizes a particular candidate, officeholder, or political party or body, and wearing badges, buttons, or clothing with partisan messages.

(d) Before entering upon the duties of office, each registrar and deputy registrar shall take the following oath before some officer authorized to administer oaths under the laws of this state:

"I do solemnly swear that I will faithfully and impartially discharge, to the best of my ability, the duties imposed upon me by law as (deputy) registrar."

(e) Registrars, deputy registrars, election superintendents, and poll officers shall be privileged from arrest upon days of primaries and



elections, except for fraudulent misconduct of duty, felony, larceny, or breach of the peace.

(f) The registrars shall conduct their duties in public and all hearings on the qualifications of electors shall be conducted in public. (Code 1981, § 21-2-214, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 6; Ga. L. 2001, p. 240, § 13; Ga. L. 2003, p. 517, § 15; Ga. L. 2012, p. 995, § 12/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted “felony involving moral turpitude unless such person’s civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude and shall never have been convicted of a crime involving

fraud” for “felony or of any crime involving fraud or moral turpitude” in the last sentence of subsection (a).

**Administrative rules and regulations.** — Registration of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.03.

**21-2-215. Main office of board of registrars; location; business hours; additional registration places; educators to serve as deputy registrars; training; registration cards and papers.**

**Administrative rules and regulations.** — Criteria for establishment of additional voter registration places, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.03.

**21-2-216. Qualifications of electors generally; reregistration of electors purged from list; eligibility of nonresidents who vote in presidential elections; retention of qualification for standing as elector; evidence of citizenship; check of convicted felons and deceased persons databases.**

(a) No person shall vote in any primary or election held in this state unless such person shall be:

- (1) Registered as an elector in the manner prescribed by law;
- (2) A citizen of this state and of the United States;
- (3) At least 18 years of age;
- (4) A resident of this state and of the county or municipality in which he or she seeks to vote; and
- (5) Possessed of all other qualifications prescribed by law.

(b) In addition to the qualifications in subsection (a) of this Code section, no person who has been convicted of a felony involving moral

turpitude may register, remain registered, or vote except upon completion of the sentence and no person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

(c) Any person who possesses the qualifications of an elector except that concerning age shall be permitted to register to vote if such person will acquire such qualification within six months after the day of registration; provided, however, that such person shall not be permitted to vote in a primary or election until the acquisition of all specified qualifications.

(d) Notwithstanding any other provision of this article, any person who was qualified and registered to vote on June 24, 1964, shall not be required to reregister under the terms of this article unless such person shall have become or becomes disqualified to vote by reason of having been purged from the list of electors or for any other reason whatsoever, in which event such person shall, in order to become registered to vote, reregister under the terms of this article.

(e) If any citizen of this state begins residence in another state after the thirtieth day next preceding any election for President and Vice President and, for that reason, does not satisfy the registration requirements of that state, such citizen shall be allowed to vote for presidential and vice presidential electors, in that election, in person in this state if such citizen satisfies, as of the date of such citizen's change of residence, the requirements to vote in this state, or by absentee ballot in this state if such citizen satisfies, but for such citizen's nonresident status and the reason for such citizen's absence, the requirements for absentee voting in this state.

(f) No person shall remain an elector longer than such person shall retain the qualifications under which such person registered.

(g)(1) On and after January 1, 2010, an application for registration under this chapter shall be accompanied by satisfactory evidence of United States citizenship. Upon the receipt of an application without satisfactory evidence of citizenship, the board of registrars shall notify the applicant in writing of the requirement to provide satisfactory evidence of citizenship. The board of registrars shall not determine the eligibility of the applicant until and unless satisfactory evidence of citizenship is supplied by the applicant. If the initial application is received without satisfactory evidence of citizenship prior to the close of voter registration preceding an election, but the applicant supplies satisfactory evidence of citizenship on or prior to the date of such election and the applicant is found eligible to vote, the applicant shall be permitted to vote in the election and any run-off elections resulting therefrom and subsequent elections; pro-

vided, however, that those electors who register to vote for the first time in this state by mail also shall supply current and valid identification as required in subsection (c) of Code Section 21-2-220. In the event the applicant does not respond to the request for the missing information within 30 days following the sending of notification to provide satisfactory evidence of citizenship, the application shall be rejected.

(2) Satisfactory evidence of citizenship shall include any of the following:

(A) The number of the applicant's Georgia driver's license or identification card issued by the Department of Driver Services if the applicant has provided satisfactory evidence of United States citizenship to the Department of Driver Services or a legible photocopy of the applicant's driver's license or identification card issued by an equivalent government agency of another state if the agency indicates on the driver's license or identification card that the applicant has provided satisfactory evidence of United States citizenship to the agency;

(B) A legible photocopy of the applicant's birth certificate that verifies citizenship to the satisfaction of the board of registrars;

(C) A legible photocopy of pertinent pages of the applicant's United States passport identifying the applicant and the applicant's passport number or presentation to the board of registrars of the applicant's United States passport;

(D) A presentation to the board of registrars of the applicant's United States naturalization documents or the alien registration number from the applicant's naturalization documents. If only the applicant's alien registration number is provided, the applicant shall not be found eligible to vote until the applicant's alien registration number is verified with the United States Citizenship and Immigration Services by the board of registrars;

(E) Other documents or methods of proof that are established pursuant to the federal Immigration Reform and Control Act of 1986 (P. L. 99-603);

(F) The applicant's Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number; and

(G) For residents of this state who are United States citizens but are not in possession of any of the documents or methods of proof enumerated under subparagraphs (A) through (F) of this paragraph, other documents or methods of proof for establishing evidence of United States citizenship which shall be promulgated by rule and regulation of the State Election Board.



(3) Notwithstanding any provision of this subsection, any person who is registered in this state on December 31, 2009, shall be deemed to have provided satisfactory evidence of citizenship and shall not be required to submit evidence of citizenship.

(4) After citizenship has been demonstrated to a board of registrars, an elector shall not be required to resubmit satisfactory evidence of citizenship in that or any other county in this state so long as the person continuously remains an elector of this state.

(5) For the purposes of this subsection, proof of voter registration from another state shall not be satisfactory evidence of citizenship.

(6) After a person has submitted satisfactory evidence of citizenship, the board of registrars shall indicate such information on the elector's voter registration record. After two years, the board of registrars may destroy all documents that were submitted as evidence of citizenship.

(7) The Secretary of State shall establish procedures to match an applicant's voter registration information to the information contained in the data base maintained by the Department of Driver Services for the verification of the accuracy of the information provided on the application for voter registration, including whether the applicant has provided satisfactory evidence of United States citizenship.

(h) Prior to approving the application of a person to register to vote, the registrars may check the data bases of persons convicted of felonies and deceased persons maintained by the Secretary of State. (Code 1981, § 21-2-216, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2009, p. 712, § 1/SB 86; Ga. L. 2011, p. 683, § 6/SB 82.)

**The 2009 amendment,** effective July 1, 2009, added subsection (g).

**The 2011 amendment,** effective July 1, 2011, added subsection (h).

OPINIONS OF THE ATTORNEY GENERAL

**Completion of sentence for crime of moral turpitude a prerequisite to registering to vote.** — If a fine is imposed where authorized by statute in addition to and independent of any sentence of probation, a person may not register and vote

until the sentence is complete in all aspects including the completion of the payment of the fine imposed. If the fine is not paid at the end of probation, then the sentence is not completed. 1984 Op. Att'y Gen. 84-33.

RESEARCH REFERENCES

**ALR.** — Validity of statute requiring proof and disclosure of information as condition of registration to vote, 48 ALR6th 181.

Validity of statute providing for purging voter registration lists of inactive voters, 51 ALR6th 287.

**21-2-217. Rules for determining residence.****JUDICIAL DECISIONS**

**Residency requirement of Commissioner met.** — In a case involving the residency requirements of O.C.G.A. §§ 21-2-217(a) and 46-2-1(b), the trial court properly granted a Commissioner's motion for summary judgment because the evidence established the Commissioner's residence in District Two at least 12 months prior to the Commissioner's election to the Public Service Commission; pursuant to O.C.G.A. § 19-2-3, the domicile of the Commissioner's spouse in another district was not presumed to be the Commissioner's domicile. *Dozier v. Baker*, 283 Ga. 543, 661 S.E.2d 543 (2008).

In ruling a candidate was not qualified to be elected as a member of the commission from a Georgia Public Service Commission district because the candidate did not meet the residency requirements of O.C.G.A. § 46-2-1(b), the Georgia Secretary of State erred in considering only the homestead exemption rule, O.C.G.A. § 21-2-217(a)(14), and ignoring the other applicable portions of § 21-2-217(a) to determine the candidate's residency. *Handel v. Powell*, 284 Ga. 550, 670 S.E.2d 62 (2008).

**21-2-218. Cancellation of registration in former state or county; address changes and corrections.**

(a) Any person, who is registered to vote in another state and who moves such person's residence from that state to this state, shall, at the time of making application to register to vote in this state, provide such information as specified by the Secretary of State in order to notify such person's former voting jurisdiction of the person's application to register to vote in this state and to cancel such person's registration in the former place of residence.

(b) Any person, who is registered to vote in another county or municipality in this state and who moves such person's residence from that county or municipality to another county or municipality in this state, shall, at the time of making application to register to vote in that county or municipality, provide such information as specified by the Secretary of State in order to notify such person's former voting jurisdiction of the person's application to register to vote in the new place of residence and to cancel such person's registration in the former place of residence.

(c) In the event that an elector moves to a residence within the county or municipality and has a different address from the address contained on the person's registration card, it shall be the duty of such elector to notify the board of registrars of such fact by the fifth Monday prior to the primary or election in which such elector wishes to vote by submitting the change of address in writing. The board of registrars shall then correct the elector's record to reflect the change of address and place the elector in the proper precinct and voting districts. The board of registrars may accept a properly submitted application for an

absentee ballot for this purpose for electors who move to an address within the county or municipality which is different from the address contained on the person's registration card. The board of registrars may also accept a properly submitted application for an absentee ballot to correct an elector's name on the voter registration list if all necessary information to complete such a change is included with the application.

(d) In the event that an elector moves to a residence within the county or municipality but into a different precinct or who moves to a residence in the same precinct but at a different address and fails to notify the board of registrars of such fact by the fifth Monday prior to an election or primary such elector shall vote in the precinct of such elector's former residence for such election or primary and for any runoffs resulting therefrom. The superintendent of an election shall make available at each polling place forms furnished by the Secretary of State which shall be completed by each such elector to reflect such elector's present legal residence. Such forms may also be used to notify the board of registrars of a change in an elector's name. The board of registrars shall thereafter place the elector in the proper precinct and voting districts and correct the list of electors accordingly. If the elector is placed in a precinct other than the one in which such elector has previously been voting, such elector shall be notified of the new polling place by first-class mail.

(e) Any provision of this chapter to the contrary notwithstanding, an elector who moves from one county or municipality to another after the fifth Monday prior to a primary or election may vote in the county or municipality or precinct in which such elector is registered to vote.

(f) No person shall vote in any county or municipality other than the county or municipality of such person's residence except as provided in subsection (e) of this Code section.

(g) In the event that the registration records incorrectly indicate that an elector has moved from an address within a precinct, the elector may vote in the precinct upon affirming in writing on a form prescribed by the Secretary of State that the elector still resides in the precinct at the address previously provided to the board of registrars. The registrars shall correct the elector's registration record to reflect the correct address.

(h) If a voter registration application is completed at a polling place for the purpose of recording a change of address and the new address is outside the county, then the registrar shall forward the application to the registrar in the new county of residence. (Code 1981, § 21-2-218, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 7; Ga. L. 2012, p. 995, § 13/SB 92.)



The 2012 amendment, effective July 1, 2012, added the last sentence in subsection (c).

**21-2-219. Registration cards; form; registration by members of armed forces or merchant marine and permanent overseas citizen; Secretary of State to provide information regarding registration and absentee ballot procedures; reports regarding absentee ballots.**

(a) The registration cards for use by persons in making application to register to vote shall be in a form as specified by the Secretary of State, which shall include printed forms, forms made available through electronic means, or otherwise. Except as provided in subsection (b) of this Code section and Code Section 21-2-221.2, only registration cards issued or authorized for use by the Secretary of State or the national voter registration card promulgated under the provisions of the National Voter Registration Act of 1993, 42 U.S.C. Section 1973gg-7, shall be accepted for purposes of voter registration.

(b) A person who is a legal resident of this state and a citizen of the United States; who is a member of the armed forces of the United States or the merchant marine, is a spouse or dependent of a member of the armed forces or the merchant marine residing with or accompanying said member, or is temporarily or permanently residing overseas; and who will be absent from such person's county of residence until after the time for registering for an ensuing primary or election may make proper application for voter registration on the official post card or write-in absentee ballot provided for by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended.

(c) Permanent overseas citizens shall only be authorized to vote for presidential electors and United States senator or representative in Congress. Permanent overseas citizens shall be deemed to be residents of the precinct in which the county courthouse is located.

(d) A properly executed registration card submitted under the provisions of subsection (b) of this Code section shall be considered to be an application for an absentee ballot under Code Section 21-2-381 or a special absentee ballot under Code Section 21-2-381.1, as appropriate.

(e) A person who is a United States citizen, permanently residing overseas, who has never lived in the United States, may register and vote in this state in the county of residence of either of such person's parents under the limitations of subsection (c) of this Code section if either of the person's parents is registered to vote in this state. Such person shall be deemed to reside at the same location as the parent for voting purposes.

(f) The office of the Secretary of State is designated as the office, under the federal Help America Vote Act, to be responsible for providing information on registration and absentee ballot procedures for use by absent uniformed services and overseas voters, including the use of the federal write-in absentee ballot.

(g) The registrars of each county shall report to the Secretary of State within 60 days after a general election in which federal candidates were on the ballot the combined number of absentee ballots transmitted to absent uniformed services and overseas voters in such election and the combined number of such ballots that were returned by such voters and cast in such election.

(h) The Secretary of State shall within 90 days after a general election in which federal candidates were on the ballot report to the federal Election Assistance Commission, on such form as may be prescribed by such commission, the combined number of absentee ballots transmitted to absent uniformed services and overseas voters in such election and the combined number of such ballots that were returned by such voters and cast in such election. (Code 1981, § 21-2-219, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 15; Ga. L. 2003, p. 517, § 17; Ga. L. 2010, p. 569, § 1/HB 1073; Ga. L. 2010, p. 914, § 8/HB 540; Ga. L. 2012, p. 995, § 14/SB 92.)

**The 2010 amendments.** — The first 2010 amendment, effective July 1, 2010, in the first sentence of subsection (d), deleted a comma following “Code Section 21-2-381” and deleted the second sentence, which read: “Such card, subject to the limitations of subsection (c) of this Code section, shall constitute a request for an absentee ballot for the period beginning upon the receipt of such card and extending through the second regularly scheduled general election in which fed-

eral candidates are on the ballot for all elections for federal offices held during such period.” The second 2010 amendment, effective July 1, 2010, inserted “or write-in absentee ballot” near the end of subsection (b).

**The 2012 amendment,** effective July 1, 2012, in subsection (a), inserted “and Code Section 21-2-221.2” and deleted “by the Federal Election Commission” following “registration card promulgated”.

## **21-2-220. Application for registration; identification requirement; rejection for failure to provide required information or for submission of false information; aid to disabled or illiterate.**

(a) Any person desiring to register as an elector shall apply to do so by making application to a registrar or deputy registrar of such person's county of residence in person, by submission of the federal post card application form as authorized under Code Section 21-2-219, by making application through the Department of Driver Services as provided in Code Section 21-2-221, by making application through the Department of Natural Resources as provided in Code Section 21-2-221.1, by making

application online as provided in Code Section 21-2-221.2, by making application through designated offices as provided in Code Section 21-2-222, or by making application by mail as provided in Code Section 21-2-223.

(b) Notwithstanding any other provision of this title, whenever a person makes application to register in person or through the means specified in this Code section, the person authorized to offer registration shall inquire as to whether the individual seeking registration is a citizen of the United States, and the person offering registration shall not be required to offer registration to an individual who answers such inquiry with a negative response.

(c) Except as otherwise provided in this subsection, electors who register to vote for the first time in this state by mail must present current and valid identification either when registering to vote by mail or when voting for the first time after registering to vote by mail. The current and valid identification shall be one or more of those forms of identification provided in subsection (c) of Code Section 21-2-417 or a legible copy thereof. The registrars shall make copies of any original forms of identification submitted by applicants and return the originals to the applicants. The requirement to submit identification shall not apply to:

(1) Persons who submit identifying information with their applications that the registrars are able to match to information contained on a state data base available to such registrars containing the same number, name, and date of birth as contained in the application;

(2) Persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq.; or

(3) Persons who are entitled to vote otherwise than in person under any other federal law.

(d) If an applicant fails to provide all of the required information on the application for voter registration with the exception of current and valid identification, the board of registrars shall notify the registrant in writing of the missing information. The board of registrars shall not determine the eligibility of the applicant until and unless all required information is supplied by the applicant. If the initial application is received prior to the close of voter registration prior to an election, if the applicant supplies the necessary information on or prior to the date of the election, and if the applicant is found eligible to vote, the applicant shall be added to the list of electors and shall be permitted to vote in the election and any run-off elections resulting therefrom and subsequent elections; provided, however, that voters who registered to vote for the first time in this state by mail must supply current and valid identifi-



cation when voting for the first time as required in subsection (c) of this Code section. In the event the elector does not respond to the request for the missing information within 30 days, the application shall be rejected.

(e) If an applicant submits false information, the board of registrars shall reject the application and shall refer the application to the district attorney of the county for criminal prosecution. If the false information is not discovered until after the applicant's application has been approved and the applicant's name added to the list of electors, the giving of such false information shall be cause to challenge the applicant's right to remain on the list of electors, which, if sustained, shall result in such applicant's name being removed from the list and the application being submitted to the district attorney of the county for criminal prosecution.

(f) A person registering to vote who is disabled or illiterate may request assistance from any other person in completing the form for registration, but the person offering assistance shall sign the voter registration form in the space provided to identify the person offering assistance.

(g) The registrars shall note on their records and the electors list any elector who registers by mail for the first time in this state and does not provide the identification required by subsection (c) of this Code section. (Code 1981, § 21-2-220, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 5, 29; Ga. L. 2001, p. 240, § 16; Ga. L. 2003, p. 517, § 18; Ga. L. 2004, p. 732, § 1; Ga. L. 2005, p. 253, § 24/HB 244; Ga. L. 2005, p. 334, § 10-1/HB 501; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2012, p. 995, § 15/SB 92.)

**The 2012 amendment**, effective July 1, 2012, inserted "by making application online as provided in Code Section 21-2-221.2," near the end of subsection (a).

**Administrative rules and regula-**

**tions.** — Registration of electors by private entities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.02.

## **21-2-221.2. Voter registration application for electronic voter registration.**

(a) A person who is qualified to register to vote in this state and who has a valid Georgia driver's license or identification card may submit a voter registration application on the Internet website of the Secretary of State. The Secretary of State shall, in conjunction with the Department of Driver Services, design and implement a system to allow for such electronic voter registration.

(b) An application submitted pursuant to this Code section shall contain:

- (1) The applicant's name and residence address;
- (2) The applicant's driver's license or identification card number;
- (3) The applicant's date of birth;
- (4) An affirmation by the applicant that the applicant is a citizen of the State of Georgia and of the United States;
- (5) An affirmation by the applicant that the information provided is truthful and that the applicant is eligible to vote in the State of Georgia;
- (6) An assent by the applicant to the use of his or her signature from his or her driver's license or identification card; and
- (7) Such other information the Secretary of State deems necessary to establish the identity of the applicant.

(c) Upon the submission of an application through the website pursuant to this Code section, the software used by the Secretary of State for processing applications through the website shall provide for immediate verification of all of the following:

- (1) That the applicant has a valid Georgia driver's license or identification card and that the number for that driver's license or identification card provided by the applicant matches the number for the applicant's driver's license or identification card that is on file with the Department of Driver Services;
- (2) That the date of birth provided by the applicant matches the date of birth that is on file with the Department of Driver Services; and
- (3) That the applicant is a citizen of the State of Georgia and of the United States and that the information provided by the applicant matches the information on file with the Department of Driver Services.

If any of these items do not match or if the application is incomplete, the application shall be void and shall be rejected and the applicant shall be notified of such rejection either electronically or by mail within five days after such application is rejected.

(d) If all of the items enumerated in subsection (c) of this Code section are verified, the Secretary of State shall obtain an electronic copy of the applicant's signature from the applicant's driver's license or identification card on file with the Department of Driver Services. The application shall then be processed in the same manner as applications under Code Section 21-2-221. Except as otherwise provided by this Code section, the application shall be deemed to have been made as of

the date that the information was provided by the applicant through the Internet website.

(e) The matching of information pursuant to subsection (c) of this Code section shall satisfy the requirements of subsection (g) of Code Section 21-2-216.

(f) The Secretary of State shall employ security measures to ensure the accuracy and integrity of voter registration applications submitted electronically pursuant to this Code section. (Code 1981, § 21-2-221.2, enacted by Ga. L. 2012, p. 995, § 16/SB 92.)

**Effective date.** — This Code section became effective July 1, 2012.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2012, “do” was substituted for “does” in the ending undesignated paragraph of subsection (c).

**21-2-222. Designated voter registration agencies and offices; definitions; duties of agencies and offices.**

**Administrative rules and regulations.** — Registration of electors, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.03.

Accessibility for elderly and disabled voters, Official Compilation of the Rules and Regulations of the State of Georgia, Registration of Electors, Chapter 183-1-6-.05.

**JUDICIAL DECISIONS**

**Relationship with the National Voter Registration Act of 1993.** — There was no clear textual basis in the operative language of 42 U.S.C. § 1973gg-5(a)(6) for the proviso found in O.C.G.A. § 21-2-222(f), the Georgia statute implementing the National Voter Registration Act of 1993, which limited the application of the mandatory distribution of forms to only those instances when such application, recertification, renewal, or change of address was made in person. Ga. State Conf. of the NAACP v. Kemp, No. 1:11-CV-1849-CAP, 2012 U.S. Dist. LEXIS 14326 (N.D. Ga. Jan. 30, 2012).

**21-2-223. Mail voter registration application forms.**

(a) The Secretary of State shall design, publish, and distribute voter registration application forms with which a person may apply to register to vote by completing and mailing the form to the Secretary of State or to the board of registrars of the person’s county of residence. The Secretary of State shall forward the applications that he or she receives to the appropriate county board of registrars to determine the eligibility of the applicant and, if found eligible, to add the applicant’s name to the list of electors and to place the applicant in the correct precinct and voting districts.

(b) The county boards of registrars shall obtain and maintain a supply of mail voter registration application forms for distribution and



for voter registration. In addition, each state, county, and municipal office, except an office which is a designated voter registration office under Code Section 21-2-222, which has regular contact with the public shall obtain a supply of mail voter registration application forms from the Secretary of State and make such applications available for use by citizens to register to vote.

(c) The mail voter registration application forms shall be made available through governmental and private entities with particular emphasis on making such forms available for organized voter registration programs. (Code 1981, § 21-2-223, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 9/HB 540.)

**The 2010 amendment**, effective July 1, 2010, in subsection (a), added “or to the board of registrars of the person’s county of residence” at the end of the first sentence, and inserted “that he or she receives” in the second sentence.

**21-2-224. Registration deadlines; restrictions on voting in primaries; official list of electors; voting procedure when portion of county changed from one county to another.**

(a) If any person whose name is not on the list of registered electors maintained by the Secretary of State under this article desires to vote at any general primary, general election, or presidential preference primary, such person shall make application as provided in this article by the close of business on the fifth Monday or, if such Monday is a legal holiday, by the close of business on the following business day prior to the date of such general primary, general election, or presidential preference primary.

(b) If any person whose name is not on the list of registered electors maintained by the Secretary of State under this article desires to vote at any special primary or special election, such person shall make application as provided in this article no later than either the close of business on the fifth day after the date of the call for the special primary or special election, excluding Saturdays, Sundays, and legal holidays of this state or the close of business on the fifth Monday prior to the date of the special primary or special election or, if such Monday is a legal holiday, by the close of business on the following business day, whichever is later; except that:

(1) If such special primary or special election is held in conjunction with a general primary, general election, or presidential preference primary, the registration deadline for such special primary or special election shall be the same as the registration deadline for the general primary, general election, or presidential preference primary in conjunction with which the special primary or special election is being conducted; or

(2) If such special primary or special election is not held in conjunction with a general primary, general election, or presidential preference primary but is held on one of the dates specified in Code Section 21-2-540 for the conduct of special elections to present a question to the voters or special primaries or elections to fill vacancies in elected county or municipal offices, the registration deadline for such a special primary or election shall be at the close of business on the fifth Monday prior to the date of the special primary or election or, if such Monday is a legal holiday, by the close of business on the following business day.

(c) Mail voter registration applications shall be deemed to have been made as of the date of the postmark affixed to such application by the United States Postal Service or, if no such postmark is affixed or if the postmark affixed by the United States Postal Service is illegible or bears no date, such application shall be deemed to have been made timely if received through the United States mail by the Secretary of State no later than the close of business on the fourth Friday prior to a general primary, general election, presidential preference primary, or special primary or special election held in conjunction with a general primary, general election, or presidential preference primary or special primary or special election held on one of the dates specified in Code Section 21-2-540 for the conduct of special elections to present questions to the voters or special primaries or special elections to fill vacancies in elected county or municipal offices or no later than the close of business on the ninth day after the date of the call, excluding Saturdays, Sundays, and legal holidays of this state, for all other special primaries and special elections.

(c.1) An individual or organization shall promptly transmit all completed voter registration applications to the Secretary of State or the appropriate board of registrars within ten days after receiving such application or by the close of registration, whichever period is earlier. If an individual or organization receives a completed voter registration application 14 or fewer days before the close of registration, the individual or organization shall transmit the application to the Secretary of State or the appropriate board of registrars within 72 hours of the date of the execution of the application or by midnight on the close of registration, whichever period is earlier.

(d) Each elector who makes timely application for registration, is found eligible by the board of registrars and placed on the official list of electors, and is not subsequently found to be disqualified to vote shall be entitled to vote in any primary or election; provided, however, that an elector, voting in the primary or primaries held by a single party for the nomination of candidates to seek public offices to be filled in an election, shall not vote in a primary held by any other party for the nomination of candidates to seek public offices to be filled in the same such election.

(e) The county board of registrars shall deliver to the chief registrar of the municipality, upon a basis mutually agreed upon between the county board of registrars and the governing authority of the municipality, a copy of the list of electors for the municipality for the primary or election. Such list shall be delivered not earlier than the fifth Monday prior to a primary or election and not later than 21 days prior to such primary or election for the purpose of permitting the chief registrar of the municipality to check the accuracy of the list. The municipal registrar shall, upon receipt of the county registration list, or as soon as practicable thereafter but in no event later than five days prior to such primary or election, review such list and identify in writing to the county board of registrars any names on the electors list of persons who are not qualified to vote at such primary or election, stating the reason for disqualification. The county board of registrars shall challenge the persons identified in accordance with Code Section 21-2-228. In addition, the county board of registrars shall provide a list of inactive electors for the municipality. The municipal registrar shall certify such lists and file with the city clerk a copy showing the names of electors entitled to vote at such primary or election.

(f) The official list of electors eligible to vote in any primary or election shall be prepared and completed at least five calendar days prior to the date of the primary or election in which the list is to be used.

(g) The official list of electors and the official list of inactive electors prepared and distributed to the poll officers of each precinct shall include only the elector's name, address, ZIP Code, date of birth, voter identification number, a designation of whether the elector registered for the first time in this state and is required to comply with Code Section 21-2-216, a designation of whether the elector registered for the first time in this state by mail and is required to comply with Code Sections 21-2-220 and 21-2-417, congressional district, state Senate district, state House district, county commission district, if any, county or independent board of education district, if any, and municipal governing authority district designations, if any, and such other voting districts, if any. The official list of electors and the official list of inactive electors prepared and distributed to the poll officers of each precinct may also include codes designating that an elector has voted by absentee ballot, has been challenged, or has been sent mail by the registrars which has been returned marked undeliverable. No person whose name does not appear on the official list of electors shall vote or be allowed to vote at any election, except as otherwise provided in this article. The county registrars shall ensure that the information required to notify poll officers that an elector registered to vote for the first time in this state by mail and must comply with subsection (c) of Code Section 21-2-220 and subsection (c) of Code Section 21-2-417 is placed on each list of electors to be used at a polling place.



(h) All persons whose names appear on the list of electors placed in the possession of the managers in each precinct and no others, except as otherwise provided in this article, shall be allowed to deposit their ballots according to law at the precinct in which they are registered.

(i) When any portion of a county or municipality is changed from one county or municipality to another, the persons who would have been qualified to vote in the county or municipality from which taken, at the time of any primary or election, shall vote in the county or municipality to which they are removed; and, if required to swear or certify, the oath or certification may be so qualified as to contain this fact. The name of such elector shall be kept and checked as provided in Code Section 21-2-228. (Code 1981, § 21-2-224, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1995, p. 1027, § 5; Ga. L. 1995, p. 1044, § 1; Ga. L. 1996, p. 145, § 7; Ga. L. 1997, p. 590, § 21; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 151, § 1; Ga. L. 2003, p. 517, § 20; Ga. L. 2005, p. 253, § 25/HB 244; Ga. L. 2010, p. 914, § 10/HB 540; Ga. L. 2012, p. 995, § 17/SB 92.)

**The 2010 amendment**, effective July 1, 2010, substituted “delivered not earlier than the fifth Monday prior to a primary or election and not later than 21 days” for “delivered at least 14 days” in the second sentence of subsection (e); and inserted “a designation of whether the elector registered for the first time in this state and is required to comply with Code Section 21-2-216,” in the first sentence of subsection (g).

**The 2012 amendment**, effective July 1, 2012, in the introductory language of subsection (b), inserted “either” following

“no later than” and inserted “or the close of business on the fifth Monday prior to the date of the special primary or special election or, if such Monday is a legal holiday, by the close of business on the following business day, whichever is later” near the end; and added subsection (c.1).

**Administrative rules and regulations.** — Preparation of electors list and use of ExpressPoll, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.07.

## **21-2-225. Confidentiality of original registration applications; limitations on registration data available for public inspection; data made available by Secretary of State.**

(a) Neither the original applications for voter registration nor any copies thereof shall be open for public inspection except upon order of a court of competent jurisdiction.

(b) Except as provided in Code Section 21-2-225.1, all data collected and maintained on electors whose names appear on the list of electors maintained by the Secretary of State pursuant to this article shall be available for public inspection with the exception of bank statements submitted pursuant to subsection (c) of Code Section 21-2-220 and subsection (c) of Code Section 21-2-417, the month and day of birth, the social security numbers, e-mail addresses, and driver’s license numbers of the electors, and the locations at which the electors applied to

register to vote, which shall remain confidential and shall be used only for voter registration purposes; provided, however, that any and all information relating to the dates of birth, social security numbers, and driver's license numbers of electors may be made available to other agencies of this state, to agencies of other states and territories of the United States, and to agencies of the federal government if the agency is authorized to maintain such information and the information is used only to identify the elector on the receiving agency's data base and is not disseminated further and remains confidential. Information regarding an elector's year of birth shall be available for public inspection.

(c) It shall be the duty of the Secretary of State to furnish copies of such data as may be collected and maintained on electors whose names appear on the list of electors maintained by the Secretary of State pursuant to this article, within the limitations provided in this article, on electronic media or computer run list or both. Notwithstanding any other provision of law to the contrary, the Secretary of State shall establish the cost to be charged for such data. The Secretary of State may contract with private vendors to make such data available in accordance with this subsection. Such data may not be used by any person for commercial purposes. (Code 1981, § 21-2-225, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1995, p. 1027, § 6; Ga. L. 1996, p. 145, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 21; Ga. L. 2004, p. 103, § 1; Ga. L. 2005, p. 253, § 26/HB 244; Ga. L. 2008, p. 781, § 8/HB 1112; Ga. L. 2009, p. 316, § 1/HB 227; Ga. L. 2010, p. 914, § 11/HB 540; Ga. L. 2011, p. 590, § 1/HB 143; Ga. L. 2011, p. 683, § 7/SB 82.)

**The 2009 amendment**, effective July 1, 2009, in subsection (b), substituted "Except as provided in Code Section 21-2-225.1, all" for "All" at the beginning and substituted "agencies of this state, agencies of other states and territories of the United States, and to agencies of the federal government" for "state agencies" near the end.

**The 2010 amendment**, effective July 1, 2010, in subsection (b), substituted "month and day of birth" for "date of birth" near the middle of the first sentence and added the last sentence.

**The 2011 amendments.** — The first 2011 amendment, effective May 12, 2011, part of an Act to revise, modernize, and correct this title, substituted "of this state, to agencies of other states and" for "of this state, agencies of other states and" in subsection (b). The second 2011 amendment, effective July 1, 2011, in the first sentence of subsection (b), inserted "e-mail addresses," and "to" near the middle.

### **21-2-225.1. Confidentiality of address of registered electors; term of request; procedure.**

(a) Any registered elector in this state who has obtained a protective order under Code Section 19-13-4 or under a similar provision of law in another state or who has obtained a restraining order or protective

order under Code Section 16-5-94 or under a similar provision of law in another state may request the board of registrars of such elector's county of residence to make such elector's residence address confidential. An elector who is a bona fide resident of a family violence shelter, as defined in Code Section 19-13-20, may request to have his or her address made confidential without having to obtain a restraining order or protective order.

(b) Upon the filing of a request with an affidavit under oath with the board of registrars by a registered elector stating that the elector has obtained a protective order under Code Section 19-13-4 or similar provision of law from another state or a restraining order or protective order under Code Section 16-5-94 or a similar provision of law of another state or, if the elector is a resident of a family violence shelter, a certification by the operators of such family violence shelter that such elector is a bona fide resident of such shelter, the registrars shall immediately review such request and supporting documents and, if such request and documentation is sufficient, shall approve the request and immediately take such steps as necessary to make the residence address of the elector confidential.

(c) A request under this Code section, once approved, shall be effective for a period of four years following its approval by the registrars and may be renewed for additional four-year periods by the filing of a new request with the supporting documentation required by subsection (b) of this Code section prior to the end of each four-year period. If the elector registers to vote in another county in this state or another state, a new request for confidentiality of the elector's residence address with the supporting documentation required in subsection (b) of this Code section shall be filed with the new county in order to continue the confidentiality of the elector's residence address or the confidentiality shall terminate.

(d) The Secretary of State shall provide by procedure, rule, or regulation for the mechanism by which such information shall be made confidential on the voter registration data base and may provide for forms for use in making such requests and for the use of alternate addresses for electors who file requests for the confidentiality of their residence addresses.

(e) Information made confidential pursuant to this Code section shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50. (Code 1981, § 21-2-225.1, enacted by Ga. L. 2009, p. 316, § 2/HB 227.)

**Effective date.** — This Code section became effective July 1, 2009.



**21-2-226. Duties of county board in determining eligibility of voters; maps of municipal boundaries; notice of ineligibility; issuance of registration cards; reimbursement for postage cost.**

**Administrative rules and regulations.** — Acceptance of voter registration applications by board of registrars, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.01.

**JUDICIAL DECISIONS**

**Cited** in Cook v. Randolph County, 573 F.3d 1143 (11th Cir. 2009).

**21-2-228. Examination of electors' qualifications; subpoenas; notice and hearing; right of appeal.**

**RESEARCH REFERENCES**

**ALR.** — Validity of statute requiring condition of registration to vote, 48 proof and disclosure of information as ALR6th 181.

**21-2-230. Challenge of persons on list of electors by other electors; procedure; hearing; right of appeal.**

(a) Any elector of the county or municipality may challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, to vote in an election. Such challenge shall be in writing and specify distinctly the grounds of such challenge. Such challenge may be made at any time prior to the election of the elector whose right to vote is being challenged voting at the elector's polling place or, if such elector cast an absentee ballot, prior to 5:00 P.M. on the day before the election; provided, however, that challenges to persons voting by absentee ballot in person at the office of the registrars or the absentee ballot clerk whose vote is cast on a DRE unit must be made prior to such person's voting.

(b) Upon the filing of such challenge, the board of registrars shall immediately consider such challenge and determine whether probable cause exists to sustain such challenge. If the registrars do not find probable cause, the challenge shall be denied. If the registrars find probable cause, the registrars shall notify the poll officers of the challenged elector's precinct or, if the challenged elector voted by absentee ballot, notify the poll officers at the absentee ballot precinct and, if practical, notify the challenged elector and afford such elector an opportunity to answer.

(c) If the challenged elector appears at the polling place to vote, such elector shall be given the opportunity to appear before the registrars and answer the grounds of the challenge.

(d) If the challenged elector does not cast an absentee ballot and does not appear at the polling place to vote and if the challenge is based on grounds other than the qualifications of the elector to remain on the list of electors, no further action by the registrars shall be required.

(e) If the challenged elector cast an absentee ballot and it is not practical to conduct a hearing prior to the close of the polls and the challenge is based upon grounds other than the qualifications of the elector to remain on the list of electors, the absentee ballot shall be treated as a challenged ballot pursuant to subsection (e) of Code Section 21-2-386. No further action by the registrars shall be required.

(f) If the challenged elector does not cast an absentee ballot and does not appear at the polling place to vote and the challenge is based on the grounds that the elector is not qualified to remain on the list of electors, the board of registrars shall proceed to hear the challenge pursuant to Code Section 21-2-229.

(g) If the challenged elector cast an absentee ballot and the challenge is based upon grounds that the challenged elector is not qualified to remain on the list of electors, the board of registrars shall proceed to conduct a hearing on the challenge on an expedited basis prior to the certification of the consolidated returns of the election by the election superintendent. The election superintendent shall not certify such consolidated returns until such hearing is complete and the registrars have rendered their decision on the challenge. If the registrars deny the challenge, the superintendent shall proceed to certify the consolidated returns. If the registrars uphold the challenge, the name of the challenged elector shall be removed from the list of electors and the ballot of the challenged elector shall be rejected and not counted and, if necessary, the returns shall be adjusted to remove any votes cast by such elector. The elector making the challenge and the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229.

(h) If the challenged elector appears at the polls to vote and it is practical to conduct a hearing on the challenge prior to the close of the polls, the registrars shall conduct such hearing and determine the merits of the challenge. If the registrars deny the challenge, the elector shall be permitted to vote in the election notwithstanding the fact that the polls may have closed prior to the time the registrars render their decision and the elector can actually vote, provided that the elector proceeds to vote immediately after the decision of the registrars. If the registrars uphold the challenge, the challenged elector shall not be

permitted to vote and, if the challenge is based upon the grounds that the elector is not qualified to remain on the list of electors, the challenged elector's name shall be removed from the list of electors.

(i) If the challenged elector appears at the polls to vote and it is not practical to conduct a hearing prior to the close of the polls or if the registrars begin a hearing and subsequently find that a decision on the challenge cannot be rendered within a reasonable time, the challenged elector shall be permitted to vote by casting a challenged ballot on the same type of ballot that is used by the county or municipality for provisional ballots. Such challenged ballot shall be sealed in double envelopes as provided in subsection (a) of Code Section 21-2-419 and, after having the word "Challenged," the elector's name, and the alleged cause of the challenge written across the back of the outer envelope, the ballot shall be deposited by the person casting such ballot in a secure, sealed ballot box notwithstanding the fact that the polls may have closed prior to the time the registrars make such a determination, provided that the elector proceeds to vote immediately after such determination of the registrars. In such cases, if the challenge is based upon the grounds that the challenged elector is not qualified to remain on the list of electors, the registrars shall proceed to finish the hearing prior to the certification of the consolidated returns of the election by the election superintendent. If the challenge is based on other grounds, no further action shall be required by the registrars. The election superintendent shall not certify such consolidated returns until such hearing is complete and the registrars have rendered their decision on the challenge. If the registrars deny the challenge, the superintendent shall proceed to certify the consolidated returns. If the registrars uphold the challenge, the name of the challenged elector shall be removed from the list of electors and the ballot of the challenged elector shall be rejected and not counted and, if necessary, the returns shall be adjusted to remove any votes cast by such elector. The elector making the challenge and the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229. (Code 1981, § 21-2-230, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 6, 30; Ga. L. 2000, p. 135, § 1; Ga. L. 2003, p. 517, § 22; Ga. L. 2005, p. 253, § 27/HB 244; Ga. L. 2010, p. 914, § 12/HB 540; Ga. L. 2012, p. 995, § 18/SB 92.)

**The 2010 amendment**, effective July 1, 2010, in subsection (i), added "casting a challenged ballot on the same type of ballot that is used by the county or municipality for mail-in absentee ballots." at the end of the first sentence, and, in the second sentence, added "Such challenged ballot shall be sealed in double envelopes as

provided in Code Section 21-2-384 and, after" at the beginning, and substituted "outer envelope, the ballot shall be deposited by the person casting such ballot in a secure, sealed ballot box" for "elector's ballot" in the middle.

**The 2012 amendment**, effective July 1, 2012, in subsection (i), substituted "pro-



visional ballots” for “mail-in absentee ballots” in the first sentence and, in the second sentence, substituted “subsection (a) of Code Section 21-2-419” for “Code Section 21-2-384” and substituted “‘Challenged,’ the elector’s name, and the al-

leged cause of the challenge” for “‘Challenged’ and the elector’s name”.

**Law reviews.** — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

**21-2-231. Lists of persons convicted of felonies, persons identified as noncitizens, persons declared mentally incompetent, and deceased persons provided to Secretary of State; removal of names from list of electors; obtain information about persons who died; timing; list of inactive voters provided to Council of Superior Court Clerks.**

(a) Unless otherwise notified by the Secretary of State, the Georgia Crime Information Center shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State a complete list of all persons, including dates of birth, social security numbers, and other information as prescribed by the Secretary of State, who were convicted of a felony in this state since the preceding reporting period. The Secretary of State may, by agreement with the commissioner of corrections, obtain criminal information relating to the conviction, sentencing, and completion of sentencing requirements of felonies. Additionally, the Secretary of State shall be authorized to obtain such criminal information relating to Georgia electors convicted of a felony in another state, if such information is available.

(a.1) The clerk of the superior court of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who identify themselves as not being citizens of the United States during their qualification to serve as a juror during the preceding calendar month in that county.

(b) The judge of the probate court of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who were declared mentally incompetent during the preceding calendar month in the county and whose voting rights were removed.

(c) Upon receipt of the lists described in subsections (a), (a.1), and (b) of this Code section and the lists of persons convicted of felonies in federal courts received pursuant to 42 U.S.C. Section 1973gg-6(g), the Secretary of State shall transmit the names of such persons whose

names appear on the list of electors to the appropriate county board of registrars who shall remove all such names from the list of electors and shall mail a notice of such action and the reason therefor to the last known address of such persons by first-class mail.

(d) Unless otherwise notified by the Secretary of State, the local registrar of vital statistics of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who died during the preceding calendar month in the county. The Secretary of State may, by agreement with the commissioner of public health, obtain such information from the state registrar of vital statistics. Additionally, the Secretary of State is authorized to obtain such lists of deceased Georgia electors, if possible, from other states.

(e) Upon receipt of the lists described in subsection (d) of this Code section, the Secretary of State or his or her designated agent shall remove all such names of deceased persons from the list of electors and shall notify the registrar in the county where the deceased person was domiciled at the time of his or her death.

(e.1) County registrars may obtain information about persons who died from obituaries published by local newspapers, death certificates, verifiable knowledge of the death, and information provided in writing and signed by a family member or members of the deceased person. County registrars shall determine if such deceased person's name appears on the list of electors and, if so, shall remove such name from the list of electors and shall send by first class mail to the mailing address shown on the elector's voter registration records a notice of such action and the reason therefor.

(f) County registrars shall initiate appropriate action regarding the right of an elector to remain on the list of qualified registered voters within 60 days after receipt of the information described in this Code section. Failure to take such action may subject the registrars or the county governing authority for whom the registrars are acting to a fine by the State Election Board.

(g) The Secretary of State shall provide to the Council of Superior Court Clerks of Georgia not later than the last day of each month all information enumerated in subsections (a) through (d) of this Code section and Code Section 21-2-232 and a list of voters who have failed to vote and inactive voters, as identified pursuant to Code Sections 21-2-234 and 21-2-235. Such data shall only be used by the council, the council's vendors, and county boards of jury commissioners for maintenance of state-wide master jury lists and county master jury lists. Such

data shall be provided to the council or its vendors in the electronic format required by the council for such purposes. (Code 1981, § 21-2-231, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 9; Ga. L. 1997, p. 590, § 26; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 7, 31; Ga. L. 1999, p. 52, § 10; Ga. L. 2001, p. 269, § 14; Ga. L. 2005, p. 253, § 28/HB 244; Ga. L. 2008, p. 781, § 9/HB 1112; Ga. L. 2009, p. 327, § 1/HB 549; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 59, § 1-65/HB 415; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2012, p. 995, § 19/SB 92.)

**The 2009 amendments.** — The first 2009 amendment, effective January 1, 2010, added subsection (a.1) and inserted “, (a.1),” near the beginning of subsection (c). The second 2009 amendment, effective July 1, 2009, substituted “commissioner of community health” for “commissioner of human resources” in the second sentence of subsection (d).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, rewrote subsection (a), which read: “Unless otherwise notified by the Secretary of State, the clerk of the superior court of each county shall, on or before the tenth day of each month, prepare and transmit to the Secretary of State, in a format as prescribed by the Secretary of State, a complete list of all persons, including addresses, ages, and other identifying information as prescribed by the Secretary of State, who were convicted of a felony involving moral turpitude during the preceding calendar month in that county. The Secretary of State may, by agreement with the commissioner of the Department of Corrections, obtain criminal information

relating to the conviction, sentencing, and completion of sentencing requirements of felonies involving moral turpitude. Additionally, the Secretary of State shall be authorized to obtain such criminal information relating to Georgia electors convicted of felonies involving moral turpitude, if possible, from other states.”; substituted “format prescribed by the Secretary of State” for “format as prescribed by the Secretary of State” near the middle of subsection (b) and near the middle of the first sentence of subsection (d); and added subsection (g). The second 2011 amendment, effective July 1, 2011, substituted “commissioner of public health” for “commissioner of community health” in the second sentence of subsection (d).

**The 2012 amendment,** effective July 1, 2012, added subsection (e.1).

**Editor’s notes.** — Ga. L. 2011, p. 59, § 1-1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Jury Composition Reform Act of 2011.’”

**Law reviews.** — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

## 21-2-232. Removal of elector’s name from list of electors.

### RESEARCH REFERENCES

**ALR.** — Validity of statute providing for purging voter registration lists of inactive voters, 51 ALR6th 287.



**21-2-233. Comparison of change of address information supplied by United States Postal Service with electors list; removal from list of electors; notice to electors.**

(a) The Secretary of State is authorized to cause at his or her discretion the official list of electors to be compared to the change of address information supplied by the United States Postal Service through its licensees periodically for the purpose of identifying those electors whose addresses have changed.

(b) If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved to a different address in the county in which the elector is presently registered, the list of electors shall be changed to reflect the new address and the elector shall be sent a notice of the change by forwardable mail at the elector's old address with a postage prepaid, preaddressed return form by which the elector may verify or correct the address information. The registrars may also send a notice of the change by forwardable mail to the elector's new address with a postage prepaid, preaddressed return form by which the elector may verify or correct the address information.

(c) If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved to a different address outside of the boundaries of the county or municipality in which the elector is presently registered, such elector shall be sent a confirmation notice as provided in Code Section 21-2-234 at the old address of the elector. The registrars may also send a confirmation notice to the elector's new address. If the elector confirms the change of address to an address outside of the State of Georgia, the elector's name shall be removed from the appropriate list of electors. If the elector confirms the change of address to an address outside of the boundaries of the county or municipality in which the elector is presently registered, but still within the State of Georgia, the elector's registration shall be transferred to the new county or municipality. The Secretary of State or the registrars shall forward the confirmation card to the registrars of the county in which the elector's new address is located and the registrars of the county of the new address shall update the voter registration list to reflect the change of address. If the elector responds to the notice and affirms that the elector has not moved, the elector shall remain on the list of electors at the elector's current address. If the elector fails to respond to the notice within 30 days after the date of the notice, the elector shall be transferred to the inactive list provided for in Code Section 21-2-235.

(d) Whenever an elector's name is removed from the list of electors by the county registrars because the elector has furnished in writing to

the registrar a residence address that is located outside of the State of Georgia, the registrars shall notify the elector in writing at the elector's new address that the elector's name is being deleted from the list of electors. Whenever an elector's registration is transferred by the county registrars to another county in this state because the elector has furnished in writing to the registrar a residence address that is located in this state outside of the elector's present county of registration in accordance with subsection (c) of this Code section, the registrars of the county of the elector's former residence shall notify the elector in writing at the elector's new address that the elector's registration is being transferred to the new address. The registrars of the county of the elector's new address shall provide the elector with a new registration card pursuant to Code Section 21-2-226.

(e) Nothing in this Code section shall prevent the removal from the list of electors of an elector for ineligibility to vote. (Code 1981, § 21-2-233, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1996, p. 145, § 10; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 19; Ga. L. 2003, p. 517, § 23; Ga. L. 2005, p. 253, § 29/HB 244; Ga. L. 2012, p. 995, § 20/SB 92.)

**The 2012 amendment**, effective July 1, 2012, in subsection (c), in the third sentence, substituted "State of Georgia" for "boundaries of the county or municipality in which the elector is presently registered" and added the fourth and fifth sentences; and, in subsection (d), in the first sentence, substituted "State of Georgia" for "elector's present county of regis-

tration" near the middle, deleted "for that county and that the elector must reregister in the new county of residence in order to be eligible to vote." from the end, deleted the former second sentence, which read: "The registrars shall provide the person with the appropriate form for registration at the time of such notice.", and added the last two sentences.

## 21-2-235. Inactive list of electors.

(a) In addition to the official list of electors, the Secretary of State shall also maintain an inactive list of electors. Notwithstanding any other provision of law to the contrary, the names of electors on the inactive list of electors shall not be counted in computing the number of ballots required for an election, the number of voting devices needed for a precinct, the number of electors required to divide or constitute a precinct, or the number of signatures needed on any petition. However, any elector whose name appears on the inactive list shall be eligible to sign a petition and such petition signature, if valid and regardless of the validity of the petition as a whole, shall be sufficient to return the elector to the official list of electors if the elector still resides at the address listed on the elector's registration records and shall be grounds to proceed under Code Section 21-2-234 to confirm the change of address of the elector if the elector provides a different address from the address which appears on the elector's registration records.

(b) An elector placed on the inactive list of electors shall remain on such list until the day after the second November general election held after the elector is placed on the inactive list of electors. If the elector makes no contact, as defined in Code Section 21-2-234, during that period, the elector shall be removed from the inactive list of electors.

(c) An elector whose name is on the inactive list of electors may vote:

(1) If the elector has not changed residences, at the polling place of such elector's last address upon affirming in writing that such elector still resides at the address shown on such elector's registration records;

(2) If the elector has moved to an address within the county in the same precinct, such elector may vote at the polling place of such elector's last address upon affirming in writing that such elector resides in the county by completing a change of address card affirming the new address within the county; or

(3) If the elector has moved to an address within the county or municipality in a different precinct, such elector may vote at the polling place of such elector's last address, for that election and any runoffs resulting from such election only, upon affirming in writing that such elector still resides in the county or municipality and completing a change of address card affirming the new address within the county or municipality.

(d) If an elector whose name appears on the inactive list of electors appears at the polls and votes as provided under subsection (c) of this Code section, the board of registrars shall transfer the elector's name back to the official list of electors and shall make any necessary corrections in the elector's registration records.

(e) In addition to the official list of electors provided to each polling place, there shall also be provided an inactive list of electors. (Code 1981, § 21-2-235, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1995, p. 8, § 1; Ga. L. 1997, p. 649, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 24; Ga. L. 2010, p. 914, § 13/HB 540.)

**The 2010 amendment**, effective July 1, 2010, inserted "and regardless of the validity of the petition as a whole" in the middle of the last sentence of subsection (a).

**21-2-236. Periods of retention of registration cards, applications, and records of list maintenance activities; rules and regulations regarding safekeeping and maintenance of electronic records.**

(a) The voter registration cards of electors whose names appear on either the official list of electors or the list of inactive electors shall be



retained on file as long as the elector remains on such lists and for a period of two years following the removal from the lists; provided, however, that an original voter registration card may be destroyed if an image of the face of the card is stored electronically.

(b) The registration applications of persons whose applications were rejected and all related material and records, or electronic facsimiles thereof, shall be retained on file for a period of two years after the date of the rejection.

(c) All records concerning list maintenance activities under Code Sections 21-2-233 and 21-2-234 shall be maintained for a period of two years and shall be available for public inspection and copying, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular elector is registered. Such records shall contain the name and address of all electors to whom confirmation notices are sent and information concerning whether each such elector has responded to such notice.

(d) The State Election Board shall adopt rules and regulations regarding the safekeeping and maintenance of electronic records of voter registration records maintained under this Code section. (Code 1981, § 21-2-236, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 21/SB 92.)

**The 2012 amendment**, effective July 1, 2012, added “; provided, however, that an original voter registration card may be destroyed if an image of the face of the

card is stored electronically” at the end of subsection (a); inserted “, or electronic facsimiles thereof,” in subsection (b); and added subsection (d).

## ARTICLE 7

### PRECINCTS AND POLLING PLACES

#### 21-2-260. Designation of precincts.

**Administrative rules and regulations.** — Use of voting equipment by municipalities, Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.02.

#### 21-2-261. Change in boundaries of precinct; creation of new precincts.

**Administrative rules and regulations.** — Notification of electors when precinct boundary changes, Official Compilation of the Rules and Regulations of

the State of Georgia, Georgia Election Code, Election Districts and Polling Places, Sec. 183-1-7-.01.

**21-2-262. Investigation as to division, redivision, alteration, formation, or consolidation of precincts; petition of electors or board of registrars.**

**Administrative rules and regulations.** — Notification of electors when precinct boundary changes, Official Compilation of the Rules and Regulations of

the State of Georgia, Georgia Election Code, Election Districts and Polling Places, Sec. 183-1-7-.01.

**21-2-263. Reduction in size of, or provision of additional voting equipment or poll workers to, precincts containing more than 2,000 electors when voting in such precincts at previous general election not completed one hour after closing of polls.**

If at the previous general election a precinct contained more than 2,000 electors and if all those electors desiring to vote had not completed voting one hour following the closing of the polls, the superintendent shall either reduce the size of said precinct so that it shall contain not more than 2,000 electors in accordance with the procedures prescribed by this chapter for the division, alteration, and consolidation of precincts no later than 60 days before the next general election or provide additional voting equipment or poll workers or both before the next general election. For administering this Code section, the chief manager of a precinct which contained more than 2,000 electors at the previous general election shall submit a report thereof, under oath, to the superintendent as to the time required for completion of voting by all persons in line at the time the polls were closed. Any such change in the boundaries of a precinct shall conform with the requirements of subsection (a) of Code Section 21-2-261.1. (Code 1933, § 34-704.1, enacted by Ga. L. 1968, p. 860, § 1; Ga. L. 1982, p. 1512, § 2; Ga. L. 1994, p. 1406, § 21; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 8/SB 82.)

**The 2011 amendment,** effective July 1, 2011, in the first sentence, inserted “either” near the middle, and added “or provide additional voting equipment or

poll workers or both before the next general election” at the end; and inserted “the boundaries of” near the beginning of the last sentence.

**21-2-265. Duty of superintendent to select polling places; change; petition objecting to proposed change; space for political parties holding primaries; facilities for disabled voters; selection of polling place outside precinct to better serve voters.**

**Administrative rules and regulations.** — Accessibility for elderly and disabled voters, Official Compilation of the

Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.04.

Notification of electors when precinct boundary changes, Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Election Code, Election Districts and Polling Places, Sec. 183-1-7-.01.

**21-2-266. Polling places — Use of public buildings; use of portable or movable facilities.**

**Administrative rules and regulations.** — Accessibility for elderly and disabled voters, Official Compilation of the

Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.04.

**21-2-267. Polling places — Equipment; arrangement; storage.**

**Administrative rules and regulations.** — Accessibility for elderly and disabled voters, Official Compilation of the

Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.04.

**21-2-269. Construction of rooms for use as temporary polling places.**

**Administrative rules and regulations.** — Accessibility for elderly and disabled voters, Official Compilation of the

Rules and Regulations of the State of Georgia, Georgia Election Code, Registration of Electors, Sec. 183-1-6-.04.

ARTICLE 8

VOTING BY BALLOT

**21-2-280. Requirement as to conduct of primaries and elections by ballot; requirement as to use of official ballots only.**

JUDICIAL DECISIONS

**Omission of directions on ballots.** — A trial court properly denied a losing candidate's petition to contest the election results of a mayoral election held in a town as the losing candidate failed to meet the burden of establishing that any misconduct, fraud, or irregularity occurred that placed the result of the election in doubt based on the county clerk signing the document reflecting the election results, instead of the election superintendent, and the clerk's failure to purge the voters list, which was not an obligation of the election supervisor anyway. The omission of the statutory language providing directions on how to cast a vote likewise did not necessitate a new election since the poll manager testified that the poll manager and other poll workers in-

structed each voter how to fill out the ballot and established that there was no concern or confusion by the voters regarding the ballot. *Lewis v. O'Day*, 284 Ga. 423, 667 S.E.2d 594 (2008).

**Methods of voting.** — O.C.G.A. § 21-2-280, by exempting electronic voting from the requirement that elections be conducted by ballot, does not violate Ga. Const. 1983, Art. II, Sec. I, Par. I because nothing in Ga. Const. 1983, Art. II, Sec. I, Para. I limits voting to some method or methods under which each voter indicates his or her choice or choices on a separate piece of paper issued to him or her for that purpose; it contemplates that the legislature shall provide a method, or methods, of voting at elections in such a way that not even those who count or tabulate the



votes will know how any particular voter voted. *Favorito v. Handel*, 285 Ga. 795, 684 S.E.2d 257 (2009).

**21-2-284. Form of official primary ballot; attestation regarding receiving value in exchange for vote.**

(a) In each primary separate official ballots shall be prepared for the political party holding the primary. At the top of each ballot shall be printed in prominent type the words "OFFICIAL PRIMARY BALLOT OF \_\_\_\_\_ PARTY FOR," followed by the designation of the precinct for which it is prepared and the name and date of the primary.

(b) The State Election Board shall by rule and regulation determine the appropriate wording for directions as to how a vote should be cast on each type of voting equipment used in the state and how a new ballot should be issued when a ballot is spoiled.

(c) Immediately under the directions, the names of all candidates who have qualified with the party in accordance with this chapter and party rules and who have been certified to the superintendent or Secretary of State as having so qualified shall be printed on the ballots, except unopposed candidates in municipal primaries where the municipal charter or ordinance does not prohibit the omission of such candidates' names from the ballot. The names of the candidates shall in all cases be arranged under the title of the office for which they are candidates and be printed thereunder in alphabetical order. The incumbency of a candidate seeking party nomination for the public office he or she then holds shall be indicated on the ballots. Under the title of each office shall be placed a direction as to the number of candidates to be voted for.

(d) If at any general primary a political party shall submit to its members any matter or question to be voted upon, the party shall by the deadline for certifying candidates for the primary election certify the wording of said question to the superintendent, if to be voted on by one county only, or to the Secretary of State, if to be voted on by more than one county; and the superintendent or Secretary of State shall have such language printed on the ballot form. To the left of each question there shall be placed the words "Yes" and "No" together with appropriate squares to the left of each for the convenient insertion of a cross (X) or check (✓) mark. If at any municipal primary a political party shall submit to its members any matter or question to be voted upon, the party shall also have printed on the ballots the necessary language to guide the elector in the expression of his or her choice as to such matter or question.

(e) Each ballot shall have printed thereon the following:

“I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.”

(f) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require. (Code 1933, § 34-1102, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 8; Ga. L. 1970, p. 347, § 14; Ga. L. 1970, p. 383, § 3; Ga. L. 1977, p. 1053, § 5; Ga. L. 1979, p. 624, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1984, p. 1, § 7; Ga. L. 1996, p. 101, § 3; Ga. L. 1997, p. 590, § 27; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 9, 33; Ga. L. 2002, p. 598, § 2-5; Ga. L. 2010, p. 914, § 14/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “color of ballot cards,” following “candidates,” in subsection (f).

**Administrative rules and regulations.** — Appearance of candidate’s name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.02.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.06.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutory requirements concerning placement of independent can-

didate for President of the United States on ballot, 33 ALR6th 513.

### 21-2-284.1. Nonpartisan municipal primaries — Form of ballot.

**Administrative rules and regulations.** — Appearance of candidate’s name on ballot, Official Compilation of the Rules

and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.02.

### 21-2-285. Form of official election ballot; attestation on receipt of benefit in exchange for vote; when an election is not required.

(a) At the top of each ballot for an election shall be printed in prominent type the words “OFFICIAL BALLOT,” followed by the designation of the precinct for which it is prepared and the name and date of the election.

(b)(1) Directions that explain how to cast a vote and how to obtain a new ballot after one is spoiled shall appear immediately under this caption on a ballot presenting the names of candidates for election to office as specified by the rules and regulations of the State Election Board.

(2) Marks made in violation of these directions shall be disregarded in the counting of the votes cast. The names of persons inserted on the ballot by the elector shall be written only within the write-in space provided and the insertion of such names outside such column or by the use of a sticker, paster, stamp, or other printed or written matter is prohibited.

(c) Immediately under the directions, the names of all candidates who have been nominated in accordance with the requirements of this chapter shall be printed on the ballot and the names of the candidates shall in all cases be arranged under the titles of the respective offices they are seeking. In a primary or special election, said names shall be arranged alphabetically by last name under the title of the office. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot. In a general election, the names of candidates who are nominees of a political party shall be placed under the name of their party. The columns of political parties shall be printed on the ballot, beginning on the left side thereof, and shall be arranged from left to right in the descending order of the totals of votes cast for candidates of the political parties for Governor at the last gubernatorial election. The columns of parties having no candidate for Governor on the ballot at the last gubernatorial election shall be arranged alphabetically according to the party name to the right of the columns of the parties so represented. The columns of political bodies shall be arranged alphabetically according to the body name to the right of the party columns. The names of all independent candidates shall be printed on the ballot in a column or columns under the heading "Independent," which shall be placed to the right of the political body columns. In the case of two or more independent candidates seeking the same office, their names shall be arranged under the title of the office in alphabetical order. The names of candidates seeking the same office shall be printed horizontally opposite one another in their respective columns, and such columns shall be of sufficient length to permit such an arrangement. To the right of the independent column or columns shall be printed a blank column sufficient for the insertion of write-in votes.

(d) Unless a candidate has filed with his or her nominating petition a certificate from a political party or body attesting that such candidate is the nominee of such party by virtue of having been nominated in a duly constituted party convention, the candidate's name shall appear on the ballot under the independent column.

(e) When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party or body and the names of the candidates of the party or body for the offices of President and Vice



President of the United States. The individual names or the nominees of each political party or body for such offices shall be posted at each polling place arranged alphabetically under the names of the candidates of the party or body for President and Vice President of the United States. A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.

(f) When proposed constitutional amendments<sup>6</sup> or other questions are submitted to a vote of the electors, each amendment or other question so submitted may be printed upon the ballot following the groups of candidates for the various offices. Proposed constitutional amendments so submitted shall be printed in the order determined by the Constitutional Amendments Publication Board and in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include the short title or heading provided for in subsection (c) of Code Section 50-12-101. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot and any local questions so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the superintendent.

(g) When proposed questions are submitted to a vote of municipal electors, each question so submitted may be printed upon the ballot to the right of or below the groups of candidates for the various offices.

(h) Each ballot shall have printed thereon the following:

"I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

(i) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require.

(j) Any other provision of law to the contrary notwithstanding, in the event there is no opposed candidate in a precinct in a general or special municipal election, no election shall be held in such precinct unless a write-in candidate has qualified as provided by law or unless there are issues to be submitted to the electorate within a precinct.

(k) When, pursuant to subsection (j) of this Code section, no election is to be conducted, the municipality shall provide notice reasonably

calculated to inform the affected electorate that no election is to be conducted. Each such unopposed candidate shall be deemed to have voted for himself or herself. The superintendent shall certify such unopposed candidate as elected in the same manner as he or she certifies other candidates as elected pursuant to Code Section 21-2-502. (Ga. L. 1922, p. 97, §§ 2, 3; Code 1933, §§ 34-1903, 34-1904; Ga. L. 1941, p. 324, § 1; Ga. L. 1948, Ex. Sess., p. 3, § 1; Ga. L. 1958, p. 208, § 6; Ga. L. 1962, p. 98, § 1; Ga. L. 1962, p. 618, § 1; Code 1933, § 34-1103, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 226, § 1; Ga. L. 1968, p. 851, § 1; Ga. L. 1969, p. 329, § 12; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 772, § 3; Ga. L. 1986, p. 1538, § 1; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 279, § 2; Ga. L. 1997, p. 590, § 28; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 10, 34; Ga. L. 2001, p. 269, § 17; Ga. L. 2002, p. 598, § 2-7; Ga. L. 2005, p. 253, § 36/HB 244; Ga. L. 2012, p. 995, § 22/SB 92.)

**The 2012 amendment**, effective July 1, 2012, in subsection (f), in the third sentence, inserted “or questions to be presented to the electors of more than one county” near the beginning and inserted “and shall include a short title or heading in bold face at the beginning of each such question on the ballot” near the end.

**Administrative rules and regulations.** — Appearance of candidate’s name on ballot, Official Compilation of the Rules

and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.02.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.06.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## JUDICIAL DECISIONS

**Omission of directions on ballots.** — A trial court properly denied a losing candidate’s petition to contest the election results of a mayoral election held in a town as the losing candidate failed to meet the burden of establishing that any misconduct, fraud, or irregularity occurred that placed the result of the election in doubt based on the county clerk signing the document reflecting the election results, instead of the election superintendent, and the clerk’s failure to purge

the voters list, which was not an obligation of the election supervisor anyway. The omission of the statutory language providing directions on how to cast a vote likewise did not necessitate a new election since the poll manager testified that the poll manager and other poll workers instructed each voter how to fill out the ballot and established that there was no concern or confusion by the voters regarding the ballot. *Lewis v. O’Day*, 284 Ga. 423, 667 S.E.2d 594 (2008).

### 21-2-285.1. Nonpartisan elections — Form of ballot; runoff election; declaration of prevailing candidate as duly elected.

The names of all candidates for offices which the General Assembly has by general law or local Act provided for election in a nonpartisan election shall be printed on each official primary ballot; and insofar as practicable such offices to be filled in the nonpartisan election shall be

separated from the names of candidates for party nomination to other offices by being listed last on each ballot, with the top of that portion of each official primary ballot relating to the nonpartisan election to have printed in prominent type the words "OFFICIAL NONPARTISAN ELECTION BALLOT." In addition, there shall be a ballot that contains just the official nonpartisan election ballot available for electors who choose not to vote in a party primary. Directions that explain how to cast a vote, how to write in a candidate, and how to obtain a new ballot after the elector spoils his or her ballot shall appear immediately under the caption, as specified by rule or regulation of the State Election Board. Immediately under the directions, the name of each such nonpartisan candidate shall be arranged alphabetically by last name under the title of the office for which they are candidates and be printed thereunder. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot. No party designation or affiliation shall appear beside the name of any candidate for nonpartisan office. An appropriate space shall also be placed on the ballot for the casting of write-in votes for such offices. In the event that no candidate in such nonpartisan election receives a majority of the total votes cast for such office, there shall be a nonpartisan election runoff between the candidates receiving the two highest numbers of votes; and the names of such candidates shall be placed on the official ballot at the general primary runoff in the same manner as prescribed in this Code section for the nonpartisan election and there shall be a separate official nonpartisan election runoff ballot for those electors who do not choose or are not eligible to vote in the general primary runoff. In the event that only nonpartisan candidates are to be placed on a run-off ballot, the form of the ballot shall be as prescribed by the Secretary of State or election superintendent in essentially the same format as prescribed for the nonpartisan election. The candidate having a majority of the votes cast in the nonpartisan election or the candidate receiving the highest number of votes cast in the nonpartisan election runoff shall be declared duly elected to such office. (Code 1981, § 21-2-285.1, enacted by Ga. L. 1983, p. 1190, § 12; Ga. L. 1984, p. 133, § 1; Ga. L. 1994, p. 279, § 3; Ga. L. 1996, p. 145, § 15; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 8; Ga. L. 2001, p. 269, § 18; Ga. L. 2002, p. 598, § 2-8; Ga. L. 2005, p. 253, § 37/HB 244; Ga. L. 2011, p. 678, § 5/HB 158.)

**The 2011 amendment**, effective July 1, 2011, in the first sentence, substituted "official primary" for "official election" in two places, inserted "general law or" and "party nomination to"; added the second sentence; and in the eighth sentence, substituted "general primary" for "general election", and added "and there shall be a separate official nonpartisan election run-

off ballot for those electors who do not choose or are not eligible to vote in the general primary runoff" at the end.

**Administrative rules and regulations.** — Appearance of candidate's name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Ballots, Chapter 183-1-11-.02.

Spoiled ballot definition, Official Compi-



lation of the Rules and Regulations of the State of Georgia, Absentee Voting, Chapter 183-1-14-.07.

**21-2-287. Form of absentee ballot.**

**Administrative rules and regulations.** — Appearance of candidate’s name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.02.

**21-2-291. Procedure as to unopposed candidates.**

Any other provision of law to the contrary notwithstanding, in the event there is no opposed candidate in a precinct in a special or general election, no special or general election shall be held in such precinct unless a write-in candidate has qualified as provided by law or unless there are issues to be submitted to the electorate. Except as provided in Code Section 21-2-158, each such unopposed candidate shall be deemed to have voted for himself or herself. Where feasible, the superintendent shall provide notice reasonably calculated to inform the affected electorate that no special or general election is to be conducted. The superintendent shall certify such unopposed candidate as elected in the same manner as he or she certifies other candidates as elected pursuant to Code Section 21-2-493. (Code 1933, § 34-1112, enacted by Ga. L. 1978, p. 1979, § 1; Ga. L. 1984, p. 1, § 10; Ga. L. 1987, p. 977, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 21; Ga. L. 2001, Ex. Sess., p. 325, § 5; Ga. L. 2010, p. 914, § 15/HB 540.)

**The 2010 amendment,** effective July 1, 2010, substituted “unless a write-in candidate” for “unless more than one write-in candidate” in the first sentence.

ARTICLE 9

VOTING MACHINES AND VOTE RECORDERS GENERALLY

PART 2

VOTING MACHINES

**21-2-322. General requirements as to voting machines.**

**Administrative rules and regulations.** — Ballot secrecy for handicapped persons, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.01.

**21-2-325. Form of ballot labels generally.**

(a) The ballot labels shall be printed in black ink upon clear, white, or pastel colored material, of such size as will fit the ballot frame, and

in plain, clear type so as to be easily readable by persons with normal vision.

(b) If the construction of the machine shall require it, the ballot label for each candidate, group of candidates, political party or body, or question to be voted on shall bear the designating letter or number of the counter on the voting machine which will register or record votes therefor. Each question to be voted on shall appear on the ballot labels in brief form. Unless otherwise provided by law, proposed constitutional amendments so submitted shall be in brief form as directed by the General Assembly and, in the failure to so direct, the form shall be determined by the Secretary of State. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot and any local questions so submitted shall be printed in brief form as directed by the General Assembly and, in the event of a failure to so direct, the form shall be determined by the superintendent. In the case of questions to be voted on by the electors of a municipality, the governing authority shall determine the brief form of the questions.

(c) The ballot label for each candidate or group of candidates nominated by a party or body shall contain the name or designation of the party or body.

(d) The titles of offices may be arranged horizontally or vertically, with the names of candidates for an office arranged transversely under or opposite the title of the office. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot labels.

(e) The names of all candidates nominated by a party or body shall appear in adjacent rows or columns containing generally the names of candidates nominated by such party or body, provided that the names of individual candidates for presidential elector shall not appear upon the ballot labels, but, in lieu thereof, the names of the candidates of such party or body for President and Vice President shall be printed together with the name of such party or body.

(f) The form and arrangement of ballot labels shall be prepared by the superintendent.

(g) The names of all candidates of a party or body shall appear in the same row or column, and no other names shall appear in the same row or column. The names of candidates and independent candidates shall be arranged under or opposite the title of the office for which they are

candidates and shall appear in the order prescribed by subsection (c) and the second sentence of subsection (e) of Code Section 21-2-285. The rows or columns occupied by the names of the candidates of political parties and bodies shall be arranged according to the priority prescribed by subsection (c) of Code Section 21-2-285. When voting machines are used on which the titles of offices are arranged horizontally, the names of all candidates for the same office shall appear within the same vertical lines.

(h) In primaries, the ballot labels containing the names of candidates seeking nomination by a political party shall be segregated on the face of the machine in adjacent rows or columns by parties, the priority of such political parties on the ballot labels to be determined in the order prescribed by subsection (c) of Code Section 21-2-285. If a nonpartisan election is being held in conjunction with a partisan primary, each partisan ballot label shall be clearly marked to indicate that the elector may vote in the nonpartisan election also. In nonpartisan elections, the ballot labels shall include a separate portion for the names of candidates seeking election in a nonpartisan election and the heading and arrangement of such candidates shall be as prescribed by Code Section 21-2-285.1 insofar as practicable. At the top of the separate portion shall be printed in prominent type the words "OFFICIAL NONPARTISAN ELECTION BALLOT."

(i) In primaries, if it shall be impracticable to place on the ballot labels of one machine the names of all candidates seeking nomination in all political parties and the names of all candidates seeking election in a nonpartisan election, the superintendent may arrange for the names of all the candidates seeking nomination in any one political party to be placed on separate voting machines; provided, however, that the names of all candidates seeking election in a nonpartisan election shall appear on all machines.

(j) Within the instruction section of the ballot label there shall be printed the following:

"I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law."

(k) Any other provision of law to the contrary notwithstanding, in the event there is no opposed candidate in a precinct in a special or general election, no special or general election shall be held in such precinct unless a write-in candidate has qualified as provided by law or unless there are issues to be submitted to the electorate. Each such unopposed candidate shall be deemed to have voted for himself or herself. Where



feasible, the superintendent shall provide notice reasonably calculated to inform the affected electorate that no special or general election is to be conducted. The superintendent shall certify such unopposed candidate as elected in the same manner as he or she certifies other candidates as elected pursuant to Code Section 21-2-493. (Code 1933, § 34-1208, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 851, § 4; Ga. L. 1977, p. 1053, § 6; Ga. L. 1978, p. 1004, § 19; Ga. L. 1978, p. 1979, § 2; Ga. L. 1979, p. 624, § 2; Ga. L. 1980, p. 437, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1983, p. 1190, § 13; Ga. L. 1984, p. 133, § 1; Ga. L. 1986, p. 772, § 4; Ga. L. 1986, p. 1538, § 2; Ga. L. 1987, p. 34, § 1; Ga. L. 1988, p. 647, § 2; Ga. L. 1989, p. 10, § 1; Ga. L. 1994, p. 279, § 5; Ga. L. 1995, p. 1027, § 7; Ga. L. 1996, p. 145, § 16; Ga. L. 1997, p. 8, § 1; Ga. L. 1997, p. 590, § 29; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 11, 35; Ga. L. 2001, p. 269, § 20; Ga. L. 2011, p. 678, § 6/HB 158; Ga. L. 2012, p. 995, § 23/SB 92.)

**The 2011 amendment**, effective July 1, 2011, in subsection (g), deleted the former sixth and seventh sentences, which read: “The names of all candidates in a nonpartisan election held in conjunction with a general election shall appear on a separate portion of the voting machine in the form and arrangement prescribed in Code Section 21-2-285.1 insofar as practicable. At the top of the separate portion shall be printed in prominent type the words ‘OFFICIAL NONPARTISAN ELECTION BALLOT.’”; and substituted “Section 21-2-285.1” for “Section 21-2-284.1” in the third sentence of subsection (h).

**The 2012 amendment**, effective July 1, 2012, in subsection (b), in the fourth sentence, inserted “or questions to be presented to the electors of more than one county” near the beginning and inserted “and shall include a short title or heading in bold face at the beginning of each such question on the ballot” in the middle.

**Administrative rules and regulations.** — Appearance of candidate’s name on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.02.

## PART 4

### OPTICAL SCANNING VOTING SYSTEMS

#### 21-2-365. Requirements for use of optical scanning voting systems.

**Administrative rules and regulations.** — Ballot secrecy for handicapped persons, Official Compilation of the Rules

and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.01.

#### 21-2-373. Write-in votes; secrecy.

**Administrative rules and regulations.** — Ballot secrecy for handicapped persons, Official Compilation of the Rules

and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.01.

**21-2-376. Demonstration of equipment.**

**Administrative rules and regulations.** — Sample ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.02.

**PART 5****ELECTRONIC RECORDING VOTING SYSTEMS****21-2-379.1. Requirements for use of direct recording electronic voting systems.**

**Administrative rules and regulations.** — Ballot secrecy for handicapped persons, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.01.

**JUDICIAL DECISIONS**

**Direct recording electronic equipment.** — Trial court did not err in granting the Secretary of State, the Governor, and the Georgia State Election Board summary judgment in voters' action challenging the use of direct recording electronic (DRE) equipment because touch-screen machines accurately recorded each vote when the machines were properly operated, and uncontroverted evidence showed that the Secretary of State had properly certified the DRE voting system pursuant to O.C.G.A. § 21-2-379.2. *Favorito v. Handel*, 285 Ga. 795, 684 S.E.2d 257 (2009).

**21-2-379.2. Review of manufacturer's recording electronic voting system by Secretary of State; appointment and compensation of examiners; revocation of approval; penalties; conflicts of interest.**

(a) Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any direct recording electronic voting system may request the Secretary of State to examine the system. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any such system previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination. The Secretary of State may, at any time, in his or her discretion, reexamine any such system.

(b) The Secretary of State shall thereupon examine or reexamine such direct recording electronic voting system and shall make and file in his or her office a report, attested by his or her signature and the seal of his or her office, stating whether, in his or her opinion, the kind of system so examined can be safely and accurately used by electors at primaries and elections as provided in this chapter. If this report states

that the system can be so used, the system shall be deemed approved; and systems of its kind may be adopted for use at primaries and elections as provided in this chapter.

(c) No kind of direct recording electronic voting system not so approved shall be used at any primary or election and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be safely or accurately used by electors at primaries or elections as provided in this chapter because of any problem concerning its ability to accurately record or tabulate votes, the approval of the same shall immediately be revoked by the Secretary of State; and no such system shall thereafter be purchased for use or be used in this state.

(d) Reserved.

(e) Any vendor who completes a sale of a direct recording electronic voting system that has not been certified by the Secretary of State to a governmental body in this state shall be subject to a penalty of \$100,000.00, payable to the State of Georgia, plus reimbursement of all costs and expenses incurred by the governmental body in connection with the sale. The State Election Board shall have authority to impose such penalty upon a finding that such a sale has occurred.

(f) When a direct recording electronic voting system has been so approved, no improvement or change that does not impair its accuracy, efficiency, or capacity shall render necessary a reexamination or reapproval of such system, or of its kind.

(g) Neither the Secretary of State, nor any custodian, nor the governing authority of any county or municipality or a member of such authority nor any other person involved in the examination process shall have any pecuniary interest in any direct recording electronic voting system or in the manufacture or sale thereof. (Code 1981, § 21-2-379.2, enacted by Ga. L. 1998, p. 1231, § 37; Ga. L. 2001, p. 240, § 31; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2011, p. 683, § 9/SB 82.)

**The 2011 amendment**, effective July 1, 2011, substituted “Reserved” for the former provisions of subsection (d), which read: “At least ten days prior to any primary or election, including special primaries, special elections, and referendum

elections, the election superintendent shall verify and certify in writing to the Secretary of State that all voting will occur on equipment certified by the Secretary of State.”

## JUDICIAL DECISIONS

**Direct recording electronic equipment.** — Trial court did not err in granting the Secretary of State, the Governor, and the Georgia State Election Board summary judgment in voters’ action challenging the

use of direct recording electronic (DRE) equipment because touch-screen machines accurately recorded each vote when the machines were properly operated, and uncontroverted evidence showed that the



Secretary of State had properly certified the DRE voting system pursuant to O.C.G.A. § 21-2-379.2. *Favorito v. Handel*, 285 Ga. 795, 684 S.E.2d 257 (2009).

**21-2-379.3. State furnishing direct recording voting systems; purchase by municipalities or counties.**

**Administrative rules and regulations.** — Conduct of elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.01.

**21-2-379.5. Ballot information.**

(a) If two or more candidates for the same nomination or office shall have the same or similar names, the Secretary of State, in the case of federal or state offices, the superintendent of elections, in the case of county offices, or the official with whom such candidates qualify, in the case of municipal elections, shall print or cause to be printed the residence of all candidates for such nomination or office on the ballot under their names. The designated official shall determine whether the names of the candidates are of such a similar nature as to warrant printing the residence of all candidates for that office on the ballot; and the decision of the designated official shall be conclusive.

(b) The ballot for each candidate or group of candidates nominated by a political party or body shall display the name or designation of the political party or body.

(c) The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot.

(d) Unless a candidate has filed with his or her nominating petition a certificate from a political party or body attesting that such candidate is the nominee of such party or body by virtue of having been nominated in a duly constituted party or body convention, the candidate's name shall appear on the ballot as an independent.

(e) When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President. The individual names or the nominees of each political party or body for such offices shall be posted at each polling place with the sample ballots required by subsection (d) of Code Section 21-2-379.7 arranged alphabetically under the names of the candidates of the party or body for President and Vice President of the United States. A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.

(f) When proposed constitutional amendments or other questions are submitted to a vote of the electors, each amendment or other question so submitted may be printed upon the ballot below the groups of candidates for the various offices. Proposed constitutional amendments so submitted shall be printed in the order determined by the Constitutional Amendments Publication Board and in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include the short title or heading provided for in subsection (c) of Code Section 50-12-101. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot; and any local questions so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the superintendent. Next to or below the question there shall be placed the words “YES” and “NO” between which the elector may choose in casting his or her vote.

(g) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require. (Code 1981, § 21-2-379.5, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 517, § 31; Ga. L. 2012, p. 995, § 24/SB 92.)

**The 2012 amendment**, effective July 1, 2012, in subsection (f), in the third sentence, inserted “or questions to be presented to the electors of more than one county” and inserted “and shall include a short title or heading in bold face at the beginning of each such question on the ballot”.

**Administrative rules and regulations.** — Appearance of candidate’s name

on ballot, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Ballots, Sec. 183-1-11-.02.

Preparation of ballots for elections, Official Compilation of the Rules and Regulations of the State of Georgia, Voting Machines — Vote Recorders, Chapter 183-1-12-.02.

## 21-2-379.6. Maintenance of voting systems and supplies.

**Administrative rules and regulations.** — Receipt, maintenance, and storage, Official Compilation of the Rules and

Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.02.

## 21-2-379.7. Preparation of polling places.

**Administrative rules and regulations.** — Before the opening of polls, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia

Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.02.

Use of absentee ballots when voting machines are inaccessible, Official Compi-

lation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-10.

### **21-2-379.8. Public exhibition of voting system and sample ballot.**

(a) The superintendent or his or her designee shall, upon request, make available for demonstration direct recording electronic (DRE) units. The Secretary of State shall advise the superintendents on recommended methods of demonstrating such units so as to properly educate electors in the use thereof, and, at least during the initial year in which DRE equipment is used in a county or municipality, all superintendents shall offer a series of demonstrations and organized voter education initiatives to equip electors for using such equipment in voting.

(b) At least 45 days before a general primary or election or during the ten days before a special primary or election and at least 21 days before a municipal general primary or election or during the ten days before a municipal special primary or election, the superintendent shall place on public exhibition, in such public places and at such times as the superintendent shall deem most suitable for the information and instruction of the electors, a sample ballot to be used in such election. The sample ballot shall show the offices and questions to be voted upon, the names and arrangements of the political parties and bodies, and the names and arrangements of the candidates to be voted for. Such sample ballots shall be under the charge and care of a person who is, in the opinion of the superintendent, competent and qualified as an instructor concerning such ballots and voting procedures. (Code 1981, § 21-2-379.8, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2010, p. 914, § 16/HB 540.)

**The 2010 amendment**, effective July 1, 2010, substituted the present provisions of the first sentence of subsection (a) for the former provisions, which read: “The superintendent or his or her designee shall place on public exhibition and demonstrate the use of the direct recording electronic (DRE) units throughout the county or municipality during the month preceding each primary and election.”; and, in the first sentence of subsection (b), substituted “45 days” for “30 days” near

the beginning, and inserted “and at least 21 days before a municipal general primary or election or during the ten days before a municipal special primary or election” near the middle.

**Administrative rules and regulations.** — Sample ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-02.

### **21-2-379.9. Storage of voting equipment.**

**Administrative rules and regulations.** — Receipt, maintenance, and storage, Official Compilation of the Rules and

Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-02.



**21-2-379.10. Procedure for electors.**

**Administrative rules and regulations.** — Conducting elections, Official Code, Voting Machines — Vote Recorders, Compilation of the Rules and Regulations Sec. 183-1-12-.02.

**21-2-379.11. Procedure for tabulation of votes.**

(a) In primaries and elections in which direct recording electronic (DRE) voting equipment is used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent. All persons who perform any duties at the tabulating center shall be deputized by the superintendent and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be in the immediate area designated for officers deputized to conduct the count.

(b) All proceedings at the tabulating center and precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the superintendent or the superintendent's authorized deputy shall touch any ballot, any DRE unit, or the tabulating equipment.

(c) After the polls have closed and all voting in the precinct has ceased, the poll manager shall shut down the DRE units and extract the election results from each unit as follows:

- (1) The manager shall obtain the results tape from each DRE unit and verify that the number of ballots cast as recorded on the tape matches the public count number as displayed on the DRE unit;
- (2) If a system is established by the Secretary of State, the poll manager shall first transmit the election results extracted from each DRE unit in each precinct via modem to the central tabulating center of the county; and
- (3) The manager shall then extract the memory card from each DRE unit.
- (d) Upon completion of shutting down each DRE unit and extracting the election results, the manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:
  - (1) The number of valid ballots;
  - (2) The number of spoiled and invalid ballots;
  - (3) The number of provisional ballots; and
  - (4) The number of unused provisional ballots and any other unused ballots.

The manager shall cause to be placed in the ballot supply container one copy of the recap form and any unused, defective, spoiled, and invalid ballots, each enclosed in an envelope.

(e) The manager shall collect and retain the zero tape and the results tape for each DRE unit and place such tapes with the memory card for each unit, and all such items for all of the DRE units used in the precinct shall be sealed in an envelope or container and initialed or signed by the manager so that it cannot be opened without breaking the seal.

(f) The manager and one poll worker shall then deliver the envelope or container to the tabulating center for the county or municipality or to such other place designated by the superintendent and shall receive a receipt therefor. The copies of the recap forms, unused ballots, records, and other materials shall be returned to the designated location and retained as provided by law.

(g) Upon receipt of the sealed envelope or container containing the zero tapes, results tapes, and memory cards, the election superintendent shall verify the initials or signatures on the envelope. Once verified, the superintendent shall break the seal of the envelope or container and remove its contents. The superintendent shall then download the results stored on the memory card from each DRE unit into the election management system located at the central tabulation point of the county in order to obtain election results for certification. (Code 1981, § 21-2-379.11, enacted by Ga. L. 2002, p. 598, § 1-4; Ga. L. 2003, p. 517, § 34; Ga. L. 2012, p. 995, § 25/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted “unit, and all such items for all of the DRE units used in the precinct shall be sealed in an envelope or container and initialed or signed” for “unit and enclose all such items for all of the DRE units used in the precinct in one envelope which shall be sealed and initialed” in subsection (e); inserted “or container” in the first sentence of subsection (f); and, in subsection (g), in the first sentence, inserted “or container” and “ini-

tials or” and inserted “or container” in the second sentence.

**Administrative rules and regulations.** — Tabulating results, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.02.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

# ARTICLE 10

## ABSENTEE VOTING

### 21-2-380. “Absentee elector” defined; when reason for absentee ballot not required.

(a) As used in this article, the term “absentee elector” means an elector of this state or a municipality thereof who casts a ballot in a primary, election, or runoff other than in person at the polls on the day of such primary, election, or runoff.

(b) An elector who votes by absentee ballot shall not be required to provide a reason in order to cast an absentee ballot in any primary, election, or runoff. (Code 1933, § 34-1401, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 15; Ga. L. 1969, p. 329, § 17a; Ga. L. 1971, Ex. Sess., p. 61, § 9; Ga. L. 1979, p. 955, § 7; Ga. L. 1982, p. 1512, § 5; Ga. L. 1984, p. 1, § 8; Ga. L. 1987, p. 465, § 1; Ga. L. 1989, p. 1084, § 1; Ga. L. 1995, p. 417, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 35; Ga. L. 2005, p. 253, § 50/HB 244; Ga. L. 2008, p. 448, § 1/SB 387; Ga. L. 2010, p. 914, § 17/HB 540.)

**The 2010 amendment**, effective July 1, 2010, rewrote subsections (a) and (b).

**Administrative rules and regulations.** — Symbols for use on absentee

ballot envelope, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.01.

## JUDICIAL DECISIONS

**For a history of O.C.G.A. § 21-2-380**, see *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**Construction of subsection (a).** — Subsection (a) of O.C.G.A. § 21-2-380 cannot be construed to require electors to have a specific reason to vote by absentee ballot. Thus, based on the legislative enactments as of December 2009, subsection (a) was rendered nugatory by the time of the 2009 run-off election. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**Construction.** — Plain language of O.C.G.A. § 21-2-381(b) requires that election officials verify the eligibility of absentee voters by one and only one criterion, their identification, and because O.C.G.A. § 21-2-381 and O.C.G.A. § 21-2-380(b) are the later enacted statutes and reflect the General Assembly’s repeated enactments over the past seven years to expand

the scope and ease of absentee voting, the clear language of O.C.G.A. §§ 21-2-380(b) and 21-2-381 must control. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**Impact of 2010 amendment.** — General Assembly amended O.C.G.A. § 21-2-380 to formally delete the six reasons for absentee voting. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**Electors not required to have reason to vote by absentee ballot.** — Trial court erred in invalidating a runoff election for a seat on a city board of commissioners on the ground that under O.C.G.A. § 21-2-380(b) electors could vote by absentee ballot without stating whether the electors had one of the six reasons specified by O.C.G.A. § 21-2-380(a), but the electors had to have one of those reasons to be eligible to cast an absentee ballot because, at the time of the 2009 election,



electors were not required to have a reason to vote by absentee ballot, and O.C.G.A. § 21-2-380(a) had been rendered nugatory by the time of the runoff election; O.C.G.A. § 21-2-380(a) cannot be

construed to require electors to have a specific reason to vote by absentee ballot. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**21-2-381. Making of application for absentee ballot; determination of eligibility by ballot clerk; furnishing of applications to colleges and universities; persons entitled to make application.**

(a)(1)(A) Except as otherwise provided in Code Section 21-2-219, not more than 180 days prior to the date of the primary or election, or runoff of either, in which the elector desires to vote, any absentee elector may make, either by mail, by facsimile transmission, by electronic transmission, or in person in the registrar's or absentee ballot clerk's office, an application for an official ballot of the elector's precinct to be voted at such primary, election, or runoff.

(B) In the case of an elector residing temporarily out of the county or municipality or a physically disabled elector residing within the county or municipality, the application for the elector's absentee ballot may, upon satisfactory proof of relationship, be made by such elector's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the age of 18 or over.

(C) The application shall be in writing and shall contain sufficient information for proper identification of the elector; the permanent or temporary address of the elector to which the absentee ballot shall be mailed; the identity of the primary, election, or runoff in which the elector wishes to vote; and the name and relationship of the person requesting the ballot if other than the elector.

(D) Except in the case of physically disabled electors residing in the county or municipality, no absentee ballot shall be mailed to an address other than the permanent mailing address of the elector as recorded on the elector's voter registration record or a temporary out-of-county or out-of-municipality address.

(E) Relatives applying for absentee ballots for electors must also sign an oath stating that facts in the application are true.

(F) If the elector is unable to fill out or sign such elector's own application because of illiteracy or physical disability, the elector shall make such elector's mark, and the person filling in the rest of the application shall sign such person's name below it as a witness.

(G) Any elector meeting criteria of advanced age or disability specified by rule or regulation of the State Election Board or any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, may request in writing on one application a ballot for a primary as well as for any runoffs resulting therefrom and for the election for which such primary shall nominate candidates as well as any runoffs resulting therefrom. If not so requested by such person, a separate and distinct application shall be required for each primary, run-off primary, election, and run-off election. Except as otherwise provided in this subparagraph, a separate and distinct application for an absentee ballot shall always be required for the presidential preference primary held pursuant to Article 5 of this chapter and for any special election or special primary.

(2) A properly executed registration card submitted under the provisions of subsection (b) of Code Section 21-2-219, if submitted within 180 days of a primary or election in which the registrant is entitled to vote, shall be considered to be an application for an absentee ballot under this Code section, or for a special absentee ballot under Code Section 21-2-381.1, as appropriate.

(3) Reserved.

(4) In extraordinary circumstances as described in Code Section 21-2-543.1, the registrar or absentee ballot clerk shall determine if the applicants are eligible to vote under this Code section and shall either mail or issue the absentee ballots for the election for representative in the United States Congress to an individual entitled to make application for absentee ballot under subsection (d) of this Code section the same day any such application is received, so long as the application is received by 3:00 P.M., otherwise no later than the next business day following receipt of the application. Any valid absentee ballot shall be accepted and processed so long as the ballot is received by the registrar or absentee ballot clerk not later than 45 days after the ballot is transmitted to the absent uniformed services voter or overseas voter, but in no event later than 11 days following the date of the election.

(b)(1) Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk shall enter thereon the date received. The registrar or absentee ballot clerk shall determine, in accordance with the provisions of this chapter, if the applicant is eligible to vote in the primary or election involved. In order to be found eligible to vote an absentee ballot by mail, the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office

and, if the application is signed by the elector, compare the signature or mark of the elector on the application with the signature or mark of the elector on the elector's voter registration card. In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 and the registrar or absentee ballot clerk shall compare the identifying information on the application with the information on file in the registrar's office.

(2) If found eligible, the registrar or absentee ballot clerk shall certify by signing in the proper place on the application and then:

(A) Shall mail the ballot as provided in this Code section;

(B) If the application is made in person, shall issue the ballot to the elector to be voted within the confines of the registrar's or absentee ballot clerk's office if issued during the advance voting period established pursuant to subsection (d) of Code Section 21-2-385; or

(C) May deliver the ballot in person to the elector if such elector is confined to a hospital.

(3) If found ineligible, the clerk or the board of registrars shall deny the application by writing the reason for rejection in the proper space on the application and shall promptly notify the applicant in writing of the ground of ineligibility, a copy of which notification should be retained on file in the office of the board of registrars or absentee ballot clerk for at least one year.

(4) If the registrar or clerk is unable to determine the identity of the elector from information given on the application, the registrar or clerk should promptly write to request additional information.

(5) In the case of an unregistered applicant who is eligible to register to vote, the clerk or the board shall immediately mail a blank registration card as provided by Code Section 21-2-223, and such applicant, if otherwise qualified, shall be deemed eligible to vote by absentee ballot in such primary or election, if the registration card, properly completed, is returned to the clerk or the board on or before the last day for registering to vote in such primary or election. If the closing date for registration in the primary or election concerned has not passed, the clerk or registrar shall also mail a ballot to the applicant, as soon as it is prepared and available; and the ballot shall be cast in such primary or election if returned to the clerk or board not later than the close of the polls on the day of the primary or election concerned.

(c) In those counties or municipalities in which the absentee ballot clerk or board of registrars provides application forms for absentee



ballots, the clerk or board shall provide such quantity of the application form to the dean of each college or university located in that county as said dean determines necessary for the students of such college or university.

(d)(1) A citizen of the United States permanently residing outside the United States is entitled to make application for an absentee ballot from Georgia and to vote by absentee ballot in any election for presidential electors and United States senator or representative in Congress:

(A) If such citizen was last domiciled in Georgia immediately before his or her departure from the United States; and

(B) If such citizen could have met all qualifications, except any qualification relating to minimum voting age, to vote in federal elections even though, while residing outside the United States, he or she does not have a place of abode or other address in Georgia.

(2) An individual is entitled to make application for an absentee ballot under paragraph (1) of this subsection even if such individual's intent to return to Georgia may be uncertain, as long as:

(A) He or she has complied with all applicable Georgia qualifications and requirements which are consistent with 42 U.S.C. Section 1973ff concerning absentee registration for and voting by absentee ballots;

(B) He or she does not maintain a domicile, is not registered to vote, and is not voting in any other state or election district of a state or territory or in any territory or possession of the United States; and

(C) He or she has a valid passport or card of identity and registration issued under the authority of the Secretary of State of the United States or, in lieu thereof, an alternative form of identification consistent with 42 U.S.C. Section 1973ff and applicable state requirements, if a citizen does not possess a valid passport or card of identity and registration.

(e) The State Election Board is authorized to promulgate reasonable rules and regulations for the implementation of paragraph (1) of subsection (a) of this Code section. Said rules and regulations may include provisions for the limitation of opportunities for fraudulent application, including, but not limited to, comparison of voter registration records with death certificates. (Ga. L. 1924, p. 186, §§ 3, 6; Code 1933, §§ 34-3302, 34-3305; Ga. L. 1943, p. 228, § 1; Ga. L. 1955, p. 204, §§ 1, 2; Ga. L. 1955, p. 732, §§ 1, 2; Ga. L. 1957, p. 39, § 1; Code 1933, § 34-1402, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, §§ 18-20; Ga. L. 1974, p. 71, §§ 1-3; Ga. L. 1977, p. 550, § 1; Ga.

L. 1978, p. 1004, § 31; Ga. L. 1979, p. 633, § 1; Ga. L. 1981, p. 1718, § 7; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 1, § 11; Ga. L. 1985, p. 632, § 3; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 932, § 5; Ga. L. 1987, p. 417, § 4; Ga. L. 1987, p. 1360, § 14; Ga. L. 1988, p. 641, § 1; Ga. L. 1989, p. 849, § 2; Ga. L. 1989, p. 1742, § 1; Ga. L. 1990, p. 143, § 3; Ga. L. 1992, p. 1815, § 2; Ga. L. 1994, p. 1406, § 22; Ga. L. 1994, p. 1443, § 4; Ga. L. 1995, p. 8, § 1; Ga. L. 1997, p. 649, § 4; Ga. L. 1997, p. 662, § 1; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 11; Ga. L. 2001, p. 230, § 13; Ga. L. 2001, p. 240, § 33; Ga. L. 2003, p. 517, § 36; Ga. L. 2005, p. 253, § 51/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2008, p. 448, §§ 2, 3/SB 387; Ga. L. 2008, p. 781, § 10/HB 1112; Ga. L. 2009, p. 41, § 1/SB 47; Ga. L. 2010, p. 569, § 2/HB 1073; Ga. L. 2010, p. 914, § 18/HB 540; Ga. L. 2011, p. 683, § 10/SB 82; Ga. L. 2011, p. 697, § 1/HB 92.)

**The 2009 amendment**, effective April 21, 2009, part of an Act to revise, modernize, and correct this title, revised language in the last sentence of paragraph (a)(4).

**The 2010 amendments.** — The first 2010 amendment, effective July 1, 2010, deleted “the reason for requesting the absentee ballot, if applicable” following “elector wishes to vote;” near the end of subparagraph (a)(1)(C); and substituted “Reserved.” for the former provisions of paragraph (a)(3), which read: “All applications for an official absentee ballot that are distributed by a person, entity, or organization shall list thereon all of the legally acceptable categories of absentee electors contained in Code Section 21-2-380 and shall require the elector to select the category which qualifies the elector to vote by absentee ballot, if applicable. Such applications, if properly completed by the elector or other authorized person and returned to the registrar or absentee ballot clerk, as appropriate, shall be processed by the registrar or absentee ballot clerk and, if the elector is found to be qualified, an absentee ballot shall be mailed or delivered in the office of the registrar or absentee ballot clerk to such elector.” The second 2010 amendment, effective July 1, 2010, in subparagraph (a)(1)(A), inserted “by electronic transmission,” in the middle of the first sentence and deleted the former last sentence, which read: “Persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens

Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, may additionally make application for an official ballot by electronic transmission.”; deleted former subparagraph (a)(1)(G), which read: “One timely and proper application for an absentee ballot for use in a primary or election shall be sufficient to require the mailing of the absentee ballot for such primary or election as well as for any runoffs resulting therefrom and for all primaries and elections for federal offices and any runoffs therefrom, including presidential preference primaries, held during the period beginning upon the receipt of such absentee ballot application and extending through the second regularly scheduled general election in which federal candidates are on the ballot occurring thereafter to an eligible absentee elector who lives outside the county or municipality in which the election is held and is also a member of the armed forces of the United States, a member of the merchant marine of the United States, or a spouse or dependent of a member of the armed forces or the merchant marine residing with or accompanying said member or overseas citizen.”; redesignated former subparagraph (a)(1)(H) as present subparagraph (a)(1)(G); and inserted “or any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended,” in the middle of the first sentence of subparagraph (a)(1)(G).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, substituted “office. The registrar or absentee ballot clerk may” for “office or” near the end of paragraph (b)(2). The second 2011 amendment, effective July 1, 2011, substituted the present provisions of paragraph (b)(2) for the former provisions, which read: “If found eligible, the registrar or absentee ballot clerk shall certify by signing in the proper place on the application and shall either mail the ballot as provided in this Code section or issue the ballot to the elector to be voted within the confines of the registrar’s or

absentee ballot clerk’s office or deliver the ballot in person to the elector if such elector is confined to a hospital.” See the Code Commission note regarding the effect of these amendments.

**Code Commission notes.** — Pursuant to Code Section 28-9-3, in 2011, the amendment of paragraph (b)(2) of this Code section by Ga. L. 2011, p. 683, § 10, was treated as impliedly repealed and superseded by Ga. L. 2011, p. 697, § 1, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

### JUDICIAL DECISIONS

**Impact of 2010 amendment.** — General Assembly amended O.C.G.A. § 21-2-381(a)(1)(C) by deleting the requirement that the elector state “the reason for requesting the absentee ballot, if applicable”. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**Construction.** — Plain language of O.C.G.A. § 21-2-381(b) requires that election officials verify the eligibility of absentee voters by one and only one criterion, their identification, and because O.C.G.A. § 21-2-381 and O.C.G.A. § 21-2-380(b) are the later enacted statutes and reflect the General Assembly’s repeated enact-

ments over the past seven years to expand the scope and ease of absentee voting, the clear language of O.C.G.A. §§ 21-2-380(b) and 21-2-381 must control. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**Standing.** — Former jail inmate lacked standing to assert a claim that an absentee voting statute, O.C.G.A. § 21-2-381(a)(1)(D), was unconstitutionally applied to deny absentee ballots to inmates; the inmate’s failure to receive a ballot was not fairly traceable to application of the statute as the inmate’s application for an absentee ballot did not provide the jail’s address. *Swann v. Sec’y*, 668 F.3d 1285 (11th Cir. 2012).

### 21-2-381.1. Procedures for voting with special write-in absentee ballots by qualified absentee electors.

(a) Notwithstanding any other provisions of this chapter, a qualified absentee elector, as defined in Code Section 21-2-380, in general, special, primary, and run-off elections, who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, and who makes timely application for but does not receive an official absentee ballot may vote by completing, signing, and mailing a federal write-in absentee ballot promulgated under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended.

(b)(1) Any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, when voting a federal



write-in absentee ballot for a federal general, special, or run-off election, may designate a candidate by writing in the name of the candidate or by writing in a party preference for each office. A written designation of the political party shall be counted as a vote for the candidate of that party.

(2) Except as provided in paragraph (3) of this subsection, an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting. In a general, special, or run-off election, the elector may alternatively designate a candidate by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person who the elector prefers for each office. A written designation of the political party shall be counted as a vote for the candidate of that party. In addition, such elector may vote on any constitutional amendment or question presented to the electors in such election by identifying the constitutional amendment or question with regard to which such elector desires to vote and specifying the elector's vote on such amendment or question.

(3) If the elector is voting in a primary or primary runoff, the elector shall identify the political party for which the elector has requested a ballot in the appropriate section of the federal write-in absentee ballot. A vote cast by writing in the name of a candidate who is not affiliated with the identified political party ballot is void and shall not be counted.

(c) Except as otherwise provided in this Code section, a federal write-in absentee ballot shall be submitted and processed in the same manner as provided for official absentee ballots. A federal write-in absentee ballot of any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, shall not be counted:

(1) In the case of a ballot submitted by an overseas elector who is not an absent uniformed services elector, if the ballot is submitted from any location in the United States;

(2) If the application of an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, for an absentee ballot is received by the appropriate board of registrars after two days prior to a general, special, primary, or run-off election; or

(3) If an official absentee ballot of an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, is received by the appropriate board of registrars not later than the deadline for receipt of absentee ballots under subparagraph (a) (1) (G) of Code Section 21-2-386.

(d) The following rules shall apply with respect to federal write-in absentee ballots:

(1) In completing the ballot, an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, may designate a candidate by writing in the name of the candidate or by writing in the name of a political party, in which case the ballot shall be counted for the candidate of that political party;

(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved; and

(3) Any abbreviation, misspelling, or other minor variation in the form of the name of the candidate or a political party shall be disregarded in determining the validity of the ballot, if the intention of the elector can be ascertained.

(e) Any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, who submits a federal write-in absentee ballot and later receives an official absentee ballot, may submit the official absentee ballot. An elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, who submits a federal write-in absentee ballot and later receives and submits an official absentee ballot should make every reasonable effort to inform the appropriate board of registrars that the elector has submitted more than one ballot. (Code 1981, § 21-2-381.1, enacted by Ga. L. 1984, p. 1, § 12; Ga. L. 1986, p. 772, § 5; Ga. L. 1987, p. 1360, § 15; Ga. L. 1997, p. 590, § 31; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 569, § 3/HB 1073; Ga. L. 2011, p. 683, § 11/SB 82.)

**The 2010 amendment**, effective July 1, 2010, rewrote this Code section. 1, 2011, added the last sentence in paragraph (b)(2).

**The 2011 amendment**, effective July

**21-2-381.2. State write-in absentee ballot for certain electors.**

**Administrative rules and regulations.** — State write-in absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.05.

**21-2-382. Additional sites as additional registrar's office or place of registration for absentee ballots.**

(a) Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish additional sites as additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of voting absentee ballots under Code Section 21-2-385, provided that any such site is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, or another government building generally accessible to the public.

(b) Any other provisions of this chapter to the contrary notwithstanding, in all counties of this state having a population of 550,000 or more according to the United States decennial census of 1990 or any future such census, any branch of the county courthouse or courthouse annex established within any such county shall be an additional registrar's or absentee ballot clerk's office or place of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of voting absentee ballots under Code Section 21-2-385. (Code 1933, § 34-1406.1, enacted by Ga. L. 1979, p. 677, § 1; Ga. L. 1981, p. 534, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1992, p. 1208, § 1; Ga. L. 1995, p. 1027, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 11A; Ga. L. 2010, p. 914, § 19/HB 540.)

**The 2010 amendment**, effective July 1, 2010, in subsection (b), deleted "or having a population between 88,000 and 90,000" following "550,000 or more" near the middle, and inserted "or absentee ballot clerk's" near the end.

**Administrative rules and regula-**

**tions.** — Additional sites as additional registrar's offices or places of registration for absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.08.

**21-2-383. Preparation and delivery of ballots; form of ballots; casting ballot in person using DRE unit.**

(a) Ballots for use by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars or absentee ballot clerk as provided in Code Section 21-2-384. Such ballots shall be marked "Official Absentee Ballot" and shall be in substantially the form for ballots required by Article 8 of this chapter, except that in counties using voting machines or direct recording



electronic (DRE) units the ballots may be in substantially the form for the ballot labels required by Article 9 of this chapter. Every such ballot shall have printed with other instructions thereon the following:

“I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.”

The form for either ballot shall be determined and prescribed by the Secretary of State, except in municipal primaries or elections, in which the form of absentee ballots which follows the paper ballot format shall be determined and prescribed by the superintendent.

(b) Notwithstanding any other provision of this Code section, in jurisdictions in which direct recording electronic (DRE) voting systems are used at the polling places on election day, such direct recording electronic (DRE) voting systems shall be used for casting absentee ballots in person at a registrar’s or absentee ballot clerk’s office or in accordance with Code Section 21-2-382, providing for additional sites. (Code 1933, § 34-1403, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 871, § 15a; Ga. L. 1969, p. 329, § 21; Ga. L. 1997, p. 649, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 15, 38; Ga. L. 2003, p. 517, § 37; Ga. L. 2010, p. 914, § 20/HB 540.)

**The 2010 amendment**, effective July 1, 2010, substituted the present provisions of subsection (b) for the former provisions, which read: “Notwithstanding any other provision of this Code section, direct recording electronic voting systems may be used for casting absentee ballots in person at a registrar’s office or in accordance with Code Section 21-2-382, providing for additional sites. In such cases, the absentee ballots shall be coded in such a way that the ballot of a challenged voter can be separated from other valid ballots

at the time of tabulation until the challenge is resolved.”

**Administrative rules and regulations.** — Use of DRE units for absentee balloting, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.02.

Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.06.

## **21-2-384. Preparation and delivery of supplies; mailing of ballots; oath of absentee electors and persons assisting absentee electors; master list of ballots sent; challenges; electronic transmission of ballots.**

(a)(1) The superintendent shall, in consultation with the board of registrars or absentee ballot clerk, prepare, obtain, and deliver before the date specified in paragraph (2) of this subsection an adequate supply of official absentee ballots to the board of registrars or absentee ballot clerk for use in the primary or election or as soon as possible prior to a runoff. Envelopes and other supplies as required by

this article may be ordered by the superintendent, the board of registrars, or the absentee ballot clerk for use in the primary or election.

(2) The board of registrars or absentee ballot clerk shall mail or issue official absentee ballots to all eligible applicants not more than 49 days but not less than 45 days prior to any presidential preference primary, general primary other than a municipal general primary, general election other than a municipal general election, or special primary or special election in which there is a candidate for a federal office on the ballot; 22 days prior to any municipal general primary or municipal general election; and as soon as possible prior to any runoff. In the case of all other special primaries or special elections, the board of registrars or absentee ballot clerk shall mail or issue official absentee ballots to all eligible applicants within three days after the receipt of such ballots and supplies, but no earlier than 22 days prior to the election; provided, however, that should any elector of the jurisdiction be permitted to vote by absentee ballot beginning 49 days prior to a primary or election, all eligible applicants of such jurisdiction shall be entitled to vote by absentee ballot beginning 49 days prior to such primary or election. As additional applicants are determined to be eligible, the board or clerk shall mail or issue official absentee ballots to such additional applicants immediately upon determining their eligibility; provided, however, that no absentee ballot shall be mailed by the registrars or absentee ballot clerk on the day prior to a primary or election and provided, further, that no absentee ballot shall be issued on the day prior to a primary or election. The board of registrars shall, within the same time periods specified in this subsection, electronically transmit official absentee ballots to all electors who have requested to receive their official absentee ballot electronically and are entitled to vote such absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended.

(3) The date a ballot is voted in the registrar's or absentee ballot clerk's office or the date a ballot is mailed or issued to an elector and the date it is returned shall be entered on the application record therefor.

(4) The delivery of an absentee ballot to a person confined in a hospital may be made by the registrar or clerk on the day of a primary or election or during a five-day period immediately preceding the day of such primary or election.

(5) In the event an absentee ballot which has been mailed by the board of registrars or absentee ballot clerk is not received by the applicant, the applicant may notify the board of registrars or absentee ballot clerk and sign an affidavit stating that the absentee ballot

has not been received. The board of registrars or absentee ballot clerk shall then issue a second absentee ballot to the applicant and cancel the original ballot issued. The affidavit shall be attached to the original application. A second application for an absentee ballot shall not be required.

(b) Except for ballots voted within the confines of the registrar's or absentee ballot clerk's office, in addition to the mailing envelope, the superintendent, board of registrars, or absentee ballot clerk shall provide two envelopes for each official absentee ballot, of such size and shape as shall be determined by the Secretary of State, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed the words "Official Absentee Ballot" and nothing else. On the back of the larger of the two envelopes to be enclosed within the mailing envelope shall be printed the form of oath of the elector and the oath for persons assisting electors, as provided for in Code Section 21-2-409, and the penalties provided for in Code Sections 21-2-568, 21-2-573, 21-2-579, and 21-2-599 for violations of oaths; and on the face of such envelope shall be printed the name and address of the board of registrars or absentee ballot clerk. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, the uniform instructions for the manner of preparing and returning the ballot, in form and substance as provided by the Secretary of State, and a notice in the form provided by the Secretary of State of all withdrawn, deceased, and disqualified candidates and any substitute candidates pursuant to Code Sections 21-2-134 and 21-2-155 and nothing else. The uniform instructions shall include information specific to the voting system used for absentee voting concerning the effect of overvoting or voting for more candidates than one is authorized to vote for a particular office and information concerning how the elector may correct errors in voting the ballot before it is cast including information on how to obtain a replacement ballot if the elector is unable to change the ballot or correct the error.

(c)(1) The oaths referred to in subsection (b) of this Code section shall be in substantially the following form:

I, the undersigned, do swear (or affirm) that I am a citizen of the United States and of the State of Georgia; that my residence address is \_\_\_\_\_ County, Georgia; that I possess the qualifications of an elector required by the laws of the State of Georgia; that I am entitled to vote in the precinct containing my residence in the primary or election in which this ballot is to be cast; that I am eligible to vote by absentee ballot; that I have not marked or mailed any other absentee ballot, nor will I mark or mail another absentee ballot for voting in such primary or election; nor



shall I vote therein in person; and that I have read and understand the instructions accompanying this ballot; and that I have carefully complied with such instructions in completing this ballot. I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.

\_\_\_\_\_  
Elector’s Residence  
Address

\_\_\_\_\_  
Month and Day of  
Elector’s Birth

\_\_\_\_\_  
Signature or Mark of Elector

Oath of Person Assisting Elector (if any):

I, the undersigned, do swear (or affirm) that I assisted the above-named elector in marking such elector’s absentee ballot as such elector personally communicated such elector’s preference to me; and that such elector is entitled to receive assistance in voting under provisions of subsection (a) of Code Section 21-2-409.

This, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Person Assisting  
Elector — Relationship

Reason for assistance (Check appropriate square):

- ☐ Elector is unable to read the English language.
- ☐ Elector requires assistance due to physical disability.

The forms upon which such oaths are printed shall contain the following information:

Georgia law provides, in subsection (b) of Code Section 21-2-409, that no person shall assist more than ten electors in any primary, election, or runoff in which there is no federal candidate on the ballot.

Georgia law further provides that any person who knowingly falsifies information so as to vote illegally by absentee ballot or who illegally gives or receives assistance in voting, as specified in Code Section 21-2-568 or 21-2-573, shall be guilty of a felony.

(2) In the case of absent uniformed services or overseas voters, if the presidential designee under Section 705(b) of the federal Help America Vote Act promulgates a standard oath for use by such voters, the Secretary of State shall be required to use such oath on absentee ballot materials for such voters and such oath shall be accepted in lieu of the oath set forth in paragraph (1) of this subsection.

(d) Each board of registrars or absentee ballot clerk shall maintain for public inspection a master list, arranged by precincts, setting forth the name and residence of every elector to whom an official absentee ballot has been sent. Absentee electors whose names appear on the master list may be challenged by any elector prior to 5:00 P.M. on the day before the primary or election.

(e) The State Election Board shall by rule or regulation establish procedures for the transmission of blank absentee ballots by mail and by electronic transmission for all electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically. If no preference is stated, the ballot shall be transmitted by mail. The State Election Board shall by rule or regulation establish procedures to ensure to the extent practicable that the procedures for transmitting such ballots shall protect the security and integrity of such ballots and shall ensure that the privacy of the identity and other personal data of such electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, to whom a blank absentee ballot is transmitted under this Code section is protected throughout the process of such transmission. (Code 1933, §§ 34-1404, 34-1405, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 27; Ga. L. 1974, p. 71, §§ 4, 5; Ga. L. 1977, p. 684, § 1; Ga. L. 1977, p. 725, § 1; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1985, p. 206, § 1; Ga. L. 1985, p. 496, § 13; Ga. L. 1985, p. 632, § 4; Ga. L. 1986, p. 32, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1987, p. 417, § 5; Ga. L. 1989, p. 643, § 9; Ga. L. 1990, p. 143, § 4; Ga. L. 1992, p. 1, § 2; Ga. L. 1992, p. 1815, § 3; Ga. L. 1995, p. 1027, § 9; Ga. L. 1997, p. 649, § 6; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 12; Ga. L. 2001, p. 230, § 14; Ga. L. 2003, p. 517, § 38; Ga. L. 2005, p. 253, § 53/HB 244; Ga. L. 2006, p. 888, § 3/HB 1435; Ga. L. 2007, p. 536, § 1/SB 40; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2010, p. 569, §§ 4, 5/HB 1073; Ga. L. 2011, p. 683, § 12/SB 82; Ga. L. 2011, p. 697, § 2/HB 92; Ga. L. 2012, p. 995, § 26/SB 92.)

**The 2010 amendment**, effective July 1, 2010, added the last sentence in paragraph (a)(2); and added subsection (e).

**The 2011 amendments.** — The first 2011 amendment, effective July 1, 2011, in paragraph (a)(1), rewrote the first sentence, which read: “The superintendent must, at least 45 days prior to any general primary or general election other than a municipal general primary or general election, and at least 21 days prior to any municipal general primary or general election, prepare, obtain, and deliver an adequate supply of official absentee ballots to the board of registrars or absentee ballot clerk for use in the primary or election”; in paragraph (a)(2), rewrote the first sentence, which read: “The board of registrars or absentee ballot clerk shall, within two days after the receipt of such ballots and supplies, mail or issue official absentee ballots to all eligible applicants”; and, in subsection (b), in the next to last sentence, deleted “and” preceding “the uniform” and inserted “, and a notice in the form provided by the Secretary of State of all withdrawn, deceased, and disqualified candidates and any substitute candidates pursuant to Code Sections 21-2-134 and 21-2-155”. The second 2011 amendment, effective July 1, 2011, inserted “as soon as possible prior to a runoff,” in the first sentence of paragraph (a)(1), and in the third sentence of paragraph (a)(2); substituted “superintendent shall” for “superintendent must”, in the first sentence of paragraph (a)(1); in paragraph (a)(3), substituted “registrar’s” for “registrars”, and inserted “or issued”; and substituted “Except for ballots voted within the confines of the registrar’s or absentee ballot clerk’s office, in” for “In” at the beginning of the first sentence of subsection (b). See the Code Commission note regarding the effect of these amendments.

**The 2012 amendment**, effective July 1, 2012, in paragraph (a)(1), substituted

the present first sentence for the former first sentence, which read: “The superintendent shall, at least 45 days prior to any general primary or general election other than a municipal general primary or general election, as soon as possible prior to a runoff, and at least 21 days prior to any municipal general primary or general election, prepare, obtain, and deliver an adequate supply of official absentee ballots to the board of registrars or absentee ballot clerk for use in the primary or election.”; and, in paragraph (a)(2), substituted the present first sentence for the former first sentence, which read: “The board of registrars or absentee ballot clerk shall, within two days after the receipt of such ballots and supplies, mail or issue official absentee ballots to all eligible applicants”, added the second sentence, and substituted the present fourth sentence for the former fourth sentence, which read: “The board of registrars shall, at least 45 days prior to any general primary, or general election other than a municipal general primary or general election, as soon as possible prior to a runoff, and at least 21 days prior to any municipal general primary or general election, mail or electronically transmit official absentee ballots to all electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended.”

**Code Commission notes.** — Pursuant to Code Section 28-9-3, in 2011, the amendment of subsection (a) of this Code section by Ga. L. 2011, p. 683, § 12, was treated as impliedly repealed and superseded by Ga. L. 2011, p. 697, § 2, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Law reviews.** — For survey article on local government law, see 59 *Mercer L. Rev.* 285 (2007).

## 21-2-385. Procedure for voting by absentee ballot; advance voting.

(a) At any time after receiving an official absentee ballot, but before the day of the primary or election, except electors who are confined to a hospital on the day of the primary or election, the elector shall vote his



or her absentee ballot, then fold the ballot and enclose and securely seal the same in the envelope on which is printed "Official Absentee Ballot." This envelope shall then be placed in the second one, on which is printed the form of the oath of the elector, the name, relationship, and oath of the person assisting, if any, and other required identifying information. The elector shall then fill out, subscribe, and swear to the oath printed on such envelope. Such envelope shall then be securely sealed and the elector shall then mail or personally deliver same to the board of registrars or absentee ballot clerk, provided that delivery by a physically disabled elector may be made by any adult person upon satisfactory proof that such adult person is such elector's mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or an individual residing in the household of such disabled elector. An elector who is confined to a hospital on a primary or election day to whom an absentee ballot is delivered by the registrar or absentee ballot clerk shall then and there vote the ballot, seal it properly, and return it to the registrar or absentee ballot clerk. If the elector registered to vote for the first time in this state by mail and has not previously provided the identification required by Code Section 21-2-220 and votes for the first time by absentee ballot and fails to provide the identification required by Code Section 21-2-220 with such absentee ballot, such absentee ballot shall be treated as a provisional ballot and shall be counted only if the registrars are able to verify the identification and registration of the elector during the time provided pursuant to Code Section 21-2-419.

(b) A physically disabled or illiterate elector may receive assistance in preparing his or her ballot from one of the following: any elector who is qualified to vote in the same county or municipality as the disabled or illiterate elector; an attendant care provider or a person providing attendant care; or the mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the disabled or illiterate elector. The person rendering assistance to the elector in preparing the ballot shall sign the oath printed on the same envelope as the oath to be signed by the elector. If the disabled or illiterate elector is sojourning outside his or her own county or municipality, a notary public of the jurisdiction may give such assistance and shall sign the oath printed on the same envelope as the oath to be signed by the elector. No person shall assist more than ten such electors in any primary, election, or runoff in which there is no federal candidate on the ballot. Any person who willfully violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both, for each such violation.

(c) When an elector applies in person for an absentee ballot, after the absentee ballots have been printed, the absentee ballot may be issued to the elector at the time of the application therefor within the confines of the registrar's or absentee ballot clerk's office if such application is made during the advance voting period as provided in subsection (d) of this Code section or may be mailed to the elector, depending upon the elector's request. If the ballot is issued to the elector at the time of application, the elector shall then and there within the confines of the registrar's or absentee ballot clerk's office vote and return the absentee ballot as provided in subsections (a) and (b) of this Code section. In the case of persons voting in accordance with subsection (d) of this Code section, the board of registrars or absentee ballot clerk shall furnish accommodations to the elector to ensure the privacy of the elector while voting his or her absentee ballot.

(d)(1) There shall be a period of advance voting that shall commence on the fourth Monday immediately prior to each primary or election and as soon as possible prior to a runoff and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted during normal business hours on weekdays during such period and shall be conducted on the second Saturday prior to a primary or election during the hours of 9:00 A.M. through 4:00 P.M.; provided, however, that in primaries and elections in which there are no federal or state candidates on the ballot, no Saturday voting hours shall be required. Except as otherwise provided in this paragraph, counties and municipalities may extend the hours for voting beyond regular business hours and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option.

(2) The registrars or absentee ballot clerk, as appropriate, shall provide reasonable notice to the electors of their jurisdiction of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted. In addition, the registrars or absentee ballot clerk shall notify the Secretary of State in the manner prescribed by the Secretary of State of the times, dates, and locations at which advance voting will be conducted. (Ga. L. 1924, p. 186, § 4; Code 1933, § 34-3303; Ga. L. 1953, Jan.-Feb. Sess., p. 579, § 1; Ga. L. 1955, p. 204, § 3; Ga. L. 1955, p. 732, § 3; Ga. L. 1956, p. 682, §§ 3, 4; Code 1933, § 34-1406, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 119, § 1; Ga. L. 1968, p. 871, § 16; Ga. L. 1969, p. 329, § 22; Ga. L. 1974, p. 71, §§ 6-8; Ga. L. 1977, p. 683, § 1; Ga. L. 1980, p. 1256, § 4; Ga. L. 1981, p. 1718, § 8; Ga. L. 1983, p. 140, § 1; Ga. L. 1985, p. 496, § 14; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 932, § 6; Ga. L. 1988, p. 641, § 2; Ga. L. 1989, p. 1742, § 2; Ga. L. 1990, p. 143, § 5; Ga. L. 1992, p. 2510, § 3; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 39; Ga. L. 2006, p. 888,

§ 4/HB 1435; Ga. L. 2007, p. 536, § 2/SB 40; Ga. L. 2010, p. 914, § 21/HB 540; Ga. L. 2011, p. 697, § 3/HB 92.)

**The 2010 amendment**, effective July 1, 2010, in subsection (c), substituted the present first and second sentences for the former first sentence, which read “When an elector applies in person for an absentee ballot, after the absentee ballots have been printed, the absentee ballot shall be issued to the elector at the time of the application therefor within the confines of the registrar’s or absentee ballot clerk’s office; and the elector shall then and there vote and return the absentee ballot as provided in subsections (a) and (b) of this Code section.”

**The 2011 amendment**, effective July 1, 2011, in subsection (c), inserted “if such application is made during the advance

voting period as provided in subsection (d) of this Code section” near the end of the first sentence, and substituted “In the case of persons voting in accordance with subsection (d) of this Code section, the” for “The” at the beginning of the third sentence; and added subsection (d).

**Administrative rules and regulations.** — Provisional absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.03.

**Law reviews.** — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

## JUDICIAL DECISIONS

**Applicability when candidate for federal office on ballot.** — Subsection (b) cannot be enforced when a candidate for federal office is on the ballot. See 42 U.S.C. § 1973aa-6; 1984 Op. Att’y Gen. No. 84-15. Also, improperly taking ballots from voters and placing them in the mail

were not “irregularit[ies] affecting the lawfulness of the ballot[s] to the extent that [they] should be discounted or thrown out.” *Kendall v. Delaney*, 282 Ga. 482, 651 S.E.2d 685 (2007) (quoting superior court’s finding).

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of early voting statutes, 29 ALR6th 343.

### 21-2-385.1. Preferential treatment for older and disabled voters.

During the period of advance voting established pursuant to subsection (d) of Code Section 21-2-385, each elector who is 75 years of age or older or who is disabled and requires assistance in casting an absentee ballot in person at the registrar’s office, absentee ballot clerk’s office, or other locations as provided for in Code Section 21-2-382 shall, upon request to a designated office employee or other individual, be authorized to vote immediately at the next available voting compartment or booth without having to wait in line if such location utilizes direct recording electronic voting systems or be authorized to go to the head of any line necessary to cast a written absentee ballot. Notice of the provisions of this Code section shall be prominently displayed in the registrar’s office or absentee ballot clerk’s office. (Code 1981,



§ 21-2-385.1, enacted by Ga. L. 2008, p. 1157, § 1/HB 993; Ga. L. 2011, p. 697, § 4/HB 92.)

**The 2011 amendment**, effective July 1, 2011, substituted “During the period of advance voting established pursuant to subsection (d) of Code Section 21-2-385, each” for “Each” at the beginning of the first sentence of this Code section.

**Administrative rules and regula-**

**tions.** — Use of absentee ballots when voting machines are inaccessible, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.10.

**21-2-386. Safekeeping, certification, and validation of absentee ballots; rejection of ballot; delivery of ballots to manager; duties of managers; precinct returns; notification of challenged elector.**

(a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election except as otherwise provided in this subsection.

(B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or mark on the oath with the signature or mark on the absentee elector’s voter registration card or the most recent update to such absentee elector’s voter registration card and application for absentee ballot or a facsimile of said signature or mark taken from said card or application, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter’s oath. Each elector’s name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

(C) If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar’s or clerk’s office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope “Rejected,” giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years.

(D) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state by absentee ballot shall include with his or her application for an absentee ballot or in the outer oath envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419.

(E) Three copies of the numbered list of voters shall also be prepared for such rejected absentee electors, giving the name of the elector and the reason for the rejection in each case. Three copies of the numbered list of certified absentee voters and three copies of the numbered list of rejected absentee voters for each precinct shall be turned over to the poll manager in charge of counting the absentee ballots and shall be distributed as required by law for numbered lists of voters.

(F) All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election shall be safely kept unopened by the board or absentee ballot clerk and then transferred to the appropriate clerk for storage for the period of time required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election. The board of registrars or absentee ballot clerk shall promptly notify the elector by first-class mail that the elector's ballot was returned too late to be counted and that the elector will not receive credit for voting in the primary or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

(G) Notwithstanding any provision of this chapter to the contrary, until the United States Department of Defense notifies the Secretary of State that the Department of Defense has implemented a system of expedited absentee voting for those electors covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by eligible absentee electors who reside outside the county or municipality in which the primary, election, or runoff

is held and are members of the armed forces of the United States, members of the merchant marine of the United States, spouses or dependents of members of the armed forces or merchant marine residing with or accompanying such members, or overseas citizens that are postmarked by the date of such primary, election, or runoff and are received within the three-day period following such primary, election, or runoff, if proper in all other respects, shall be valid ballots and shall be counted and included in the certified election results.

(2) After the opening of the polls on the day of the primary, election, or runoff, the registrars or absentee ballot clerks shall be authorized to open the outer envelope on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked "Official Absentee Ballot," except as otherwise provided in this Code section. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the outer envelopes are being opened. After opening the outer envelopes, the ballots shall be safely and securely stored until the time for tabulating such ballots.

(3) A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and begin tabulating the absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary, election, or runoff, the Secretary of State of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process.

(4) The county election superintendent shall publish a written notice in the superintendent's office of the superintendent's intent to



begin the absentee ballot tabulation prior to the close of the polls and publish such notice at least one week prior to the primary, election, or runoff in the legal organ of the county.

(5) The process for opening the inner envelopes of and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be a confidential process to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.

(6) All persons conducting the tabulation of absentee ballots during the day of a primary, election, or runoff, including the vote review panel required by Code Section 21-2-483, and all monitors and observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular telephones; shall not utilize computers for the purpose of e-mail, instant messaging, or other forms of communication; and shall not communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory and technical assistance personnel shall be permitted to enter and leave the area in which the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be placed into locked ballot boxes and may be transferred to locked ballot bags, if needed, for security. The persons conducting the tabulation of the absentee ballots shall not cause the tabulating equipment to produce any count, partial or otherwise, of the absentee votes cast until the time for the closing of the polls.

(b) As soon as practicable after 7:00 A.M. on the day of the primary, election, or runoff, in precincts other than those in which optical scanning tabulators are used, a registrar or absentee ballot clerk shall deliver the official absentee ballot of each certified absentee elector, each rejected absentee ballot, applications for such ballots, and copies of the numbered lists of certified and rejected absentee electors to the manager in charge of the absentee ballot precinct of the county or

municipality, which shall be located in the precincts containing the county courthouse or polling place designated by the municipal superintendent. In those precincts in which optical scanning tabulators are used, such absentee ballots shall be taken to the tabulation center or other place designated by the superintendent, and the official receiving such absentee ballots shall issue his or her receipt therefor. Except as otherwise provided in this Code section, in no event shall the counting of the ballots begin before the polls close.

(c) Except as otherwise provided in this Code section, after the close of the polls on the day of the primary, election, or runoff, a manager shall then open the outer envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope marked "Official Absentee Ballot" in a ballot box reserved for absentee ballots. In the event that an outer envelope is found to contain an absentee ballot that is not in an inner envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person sealing the inner envelope, and deposited in the ballot box and counted in the same manner as other absentee ballots, provided that such ballot is otherwise proper. Such manager with two assistant managers, appointed by the superintendent, with such clerks as the manager deems necessary shall count the absentee ballots following the procedures prescribed by this chapter for other ballots, insofar as practicable, and prepare an election return for the county or municipality showing the results of the absentee ballots cast in such county or municipality.

(d) All absentee ballots shall be counted and tabulated in such a manner that returns may be reported by precinct; and separate returns shall be made for each precinct in which absentee ballots were cast showing the results by each precinct in which the electors reside.

(e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall write "Challenged," the elector's name, and the alleged cause of challenge on the outer envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection. The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

(f) It shall be unlawful at any time prior to the close of the polls for any person to disclose or for any person to receive any information regarding the results of the tabulation of absentee ballots except as expressly provided by law. (Ga. L. 1924, p. 186, §§ 11, 12, 14; Code 1933, §§ 34-3311, 34-3312, 34-3314; Ga. L. 1955, p. 204, § 5; Code 1933, § 34-1407, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L.

1969, p. 280, §§ 1, 2; Ga. L. 1974, p. 71, §§ 9-11; Ga. L. 1977, p. 725, § 2; Ga. L. 1978, p. 1004, § 32; Ga. L. 1979, p. 629, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1990, p. 143, § 6; Ga. L. 1992, p. 1, § 4; Ga. L. 1992, p. 1815, § 4; Ga. L. 1993, p. 118, § 1; Ga. L. 1997, p. 590, § 32; Ga. L. 1997, p. 662, § 2; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 1231, §§ 16, 39; Ga. L. 1999, p. 29, § 2; Ga. L. 2001, p. 240, § 34; Ga. L. 2001, p. 269, § 21; Ga. L. 2003, p. 517, § 40; Ga. L. 2005, p. 253, § 54/HB 244; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2007, p. 544, § 4/SB 194; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2008, p. 448, § 4/SB 387; Ga. L. 2009, p. 300, § 1/HB 86; Ga. L. 2011, p. 590, § 1/HB 143; Ga. L. 2011, p. 683, § 13/SB 82; Ga. L. 2012, p. 995, §§ 27, 28/SB 92.)

**The 2009 amendment**, effective July 1, 2009, substituted the present provisions of subsection (d) for the former provisions which read: "Any other provision of law to the contrary notwithstanding, if at any primary, general, or special election in any county any question is to be voted on involving any political subdivision which includes less than the entire county, all absentee ballots shall be separated by precinct for counting purposes; and separate returns shall be certified for each precinct in which absentee ballots were cast."

**The 2011 amendments.** — The first 2011 amendment, effective May 12, 2011, part of an Act to revise, modernize, and correct this title, substituted "e-mail" for "electronic mail" in the second sentence of paragraph (a)(6). The second 2011 amendment, effective July 1, 2011, in paragraph (a)(3), in the second sentence, substituted "Secretary of State" for "county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county and each independent and nonpartisan candidate whose name appears on the ballot for such primary, election, or runoff in such county" and deleted "and their right to appoint monitors to observe the tabulation" following "the polls" from the end, in the third sentence, substituted "The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates

whose names appear on the ballot for such election in such county" for "Such committee" at the beginning, and in the last sentence, inserted "superintendent shall also notify in writing the" and inserted "who" near the end.

**The 2012 amendment**, effective July 1, 2012, inserted "or the most recent update to such absentee elector's voter registration card" in the second sentence of subparagraph (a)(1)(B); substituted "two years" for "one year" in the last sentence of subparagraph (a)(1)(C); and, in the first sentence of subsection (e), deleted "open the envelopes and" following "a poll officer shall" and substituted "outer envelope and shall deposit the ballot in a secure, sealed ballot box" for "back of the ballot, without disclosing the markings on the face thereof, and shall deposit the ballot in the box".

**Administrative rules and regulations.** — Provisional absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.03.

Reporting requirements for absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.04.

Acceptance of absentee ballots from military and overseas citizens, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.10.

**Law reviews.** — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).



## JUDICIAL DECISIONS

**Failure to furnish required information.** — Because a candidate for sheriff did not establish substantial error in the votes cast by the electors, the trial court erred by finding, pursuant to O.C.G.A. § 21-2-386, the requisite irregularity or illegality sufficient to change or

place in doubt the result of the election; a voter's failure to furnish required information on an absentee ballot envelope is a ground for rejection, but does not mandate automatic rejection, of the ballot. *Jones v. Jessup*, 279 Ga. 531, 615 S.E.2d 529 (2005).

**21-2-387. Pilot program for electronic handling of absentee ballots; requirements for pilot program; reporting; termination of pilot program.**

(a) The Secretary of State shall develop and implement a pilot program for the electronic transmission, receipt, and counting of absentee ballots by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, for use in a primary or a general election.

(b) Such pilot program shall provide, at a minimum, for:

(1) The encryption of information and the transmission of such information over a secure network;

(2) The authentication of such information;

(3) The verification of the identity and eligibility of the elector to vote in the primary, election, or runoff, as the case may be;

(4) The protection of the privacy, anonymity, and integrity of the ballots cast;

(5) The prevention of the casting of multiple ballots by the same elector in a primary, election, or runoff;

(6) The prevention of any tampering, abuse, fraudulent use, or illegal manipulation of such system;

(7) The uninterrupted reliability of such system for casting ballots by qualified voters;

(8) The capability of the elector to determine if the electronic transmission of the ballot was successful;

(9) The ability to audit such ballots and to verify that such ballots were properly counted; and

(10) The ability to verify that the information transmitted over the secure network was not viewed or altered by sites that lie between the voting location and the vote counting destination.

(c) The Secretary of State shall develop procedures by which persons who are eligible to utilize the pilot program to vote shall be notified of its availability and the procedures and methods for its utilization.

(d) The provisions of this article shall apply to ballots requested, transmitted, voted, received, and counted under this pilot program as nearly as practicable, but the Secretary of State and the State Election Board shall be authorized to vary such provisions by rule or regulation as necessary to accomplish the goals of this pilot program, provided that such variances shall retain and maintain the same degree of security and integrity of such ballots as provided by this article although in different forms or formats as necessitated by the technology utilized in such pilot program. The Secretary of State and the State Election Board are authorized to promulgate such rules and regulations as necessary to implement the provisions of this Code section and to provide for such variances to this article as needed pursuant to this subsection.

(e) The Secretary of State shall review the results of the pilot program and shall provide the members of the General Assembly with a comprehensive report no later than 90 days following the primary or general election in which such pilot program is used on the effectiveness of such pilot program with any recommendations for its continued use and any needed changes in such program for future primaries and elections.

(f) The pilot program shall be used in the first primary or general election following:

(1) The inclusion in the Appropriations Act of a specific line item appropriation for funding of such pilot program or a determination by the Secretary of State that there is adequate funding through public or private funds, or a combination of public and private funds, to conduct the pilot program; provided, however, that no funds shall be accepted from registered political parties or political bodies for this purpose; and

(2) Certification by the Secretary of State that such pilot program is feasible and can be implemented for such primary or general election.

(g) This Code section shall be repealed by operation of law on July 1 of the year following the conclusion of the pilot program. (Code 1981, § 21-2-387, enacted by Ga. L. 2010, p. 807, § 1; Ga. L. 2011, p. 683, § 14/SB 82.)

**Effective date.** — This Code section became effective July 1, 2010.

**The 2011 amendment,** effective July 1, 2011, in subsection (a), substituted “a primary or a general election” for “a gen-

eral election and general election runoff”; in paragraph (b)(3), substituted “the primary, election, or runoff” for “the election or runoff”; in paragraph (b)(5), substituted “a primary, election, or runoff” for “an

election”; in subsection (d), added the present first sentence, and added “and to provide for such variances to this article as needed pursuant to this subsection” at the end of the second sentence; in subsection (e), substituted “the primary or general election” for “the general election and general election runoff” and inserted “primaries and”; and, in the introductory language of subsection (f) and paragraph (f)(2), substituted “primary or general

election” for “general election and general election runoff”.

**Editor’s notes.** — This Code section formerly pertained to the procedure for ballots of deceased electors. The former Code section was based on Code 1933, § 34-1408, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1 and was repealed by Ga. L. 2005, p. 253, § 55/HB 244, effective July 1, 2005.

## **21-2-388. Cancellation of absentee ballots of electors who are present in election precinct during primaries and elections.**

**Administrative rules and regulations.** — Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.06.

Voted absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Absentee Voting, Chapter 183-1-14-.09.

## **21-2-390. Delivery of election materials to clerk of superior court or city clerk after primary or election; accounting for ballots by registrars or municipal absentee ballot clerks.**

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

# **ARTICLE 11**

## **PREPARATION FOR AND CONDUCT OF PRIMARIES AND ELECTIONS**

### **PART 1**

#### **GENERAL PROVISIONS**

## **21-2-400. Duty of superintendent to obtain cards of instruction, blank forms of oaths, and other forms and supplies; preparation and distribution of sample or facsimile ballot labels.**

(a) Prior to each primary and election, the superintendent shall obtain from the Secretary of State a sufficient number of cards of instruction for guidance of electors. Such cards of instruction shall include such portions of this chapter as deemed necessary by the Secretary of State and shall be printed for the type of voting equipment



or ballots used in the county or municipality. The superintendent shall also obtain from the Secretary of State a sufficient number of blank forms of oaths of poll officers, voter's certificates, voting rights posters, notices of penalties, oaths of assisted electors, numbered list of voters, tally sheets, return sheets, and such other forms and supplies required by this chapter, in each precinct of the county or municipality.

(b) As an aid to electors, sample ballots or ballot labels may be printed and published in any newspaper generally and regularly circulated within the county or municipality, so long as the facsimile is labeled "Sample Ballot" and is at least 25 percent larger or smaller than the official ballot. Reprints of such newspaper printings may be procured and distributed by any elector. Election officials may also prepare and distribute sample ballots or ballot labels or portions thereof, provided they are labeled "Sample Ballot" and are of a different color and at least 25 percent larger or smaller than the official ballot or ballot label.

(c) The superintendent shall prepare sample or facsimile ballots or ballot labels, as the case may be, for each general election which shall contain each question and the candidates who are offering for election for each office which will be voted upon in the county or municipality for distribution upon request to interested electors. Such sample or facsimile ballots or ballot labels shall comply with Code Section 21-2-575. (Orig. Code 1863, § 1237; Code 1868, § 1318; Code 1873, § 1291; Code 1882, § 1291; Ga. L. 1895, p. 23, § 1; Civil Code 1895, § 76; Ga. L. 1900, p. 69, §§ 1, 3; Civil Code 1910, §§ 86, 87; Ga. L. 1922, p. 97, § 7; Code 1933, §§ 34-1401, 34-1402, 34-1908; Code 1933, § 34-1301, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1970, p. 347, § 19; Ga. L. 1977, p. 1198, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 42; Ga. L. 2005, p. 253, § 56/HB 244; Ga. L. 2011, p. 683, § 15/SB 82.)

**The 2011 amendment**, effective July 1, 2011, deleted ". The superintendent shall maintain such sample or facsimile ballots or ballot labels at the county courthouse" following "or municipality" in the first sentence of subsection (c).

**21-2-401. Delivery of forms and supplies to precincts; distribution of copy of certified electors list; contents of list; authentication; return receipts; master list of county or municipal electors; items to be provided at polling place.**

(a) The cards of instruction, return sheets, tally sheets, oaths of poll officers, affidavits, and other forms and supplies required for use in each precinct, and, in precincts in which ballots are used, the official ballots prepared for use therein shall be packed by the superintendent in separate sealed packages for each precinct, marked on the outside so

as to designate clearly the precincts for which they are intended and, in the case of precincts in which ballots are used, the number of ballots enclosed. They shall then be delivered by the superintendent, together with the ballot box which shall bear the designation of the precinct, to the managers in the several precincts prior to the hour appointed for opening the polls. In primaries, the parties shall decide whether to use the same ballot box or to use separate ballot boxes. The managers of the respective precincts shall, on delivery to them of such packages, return receipts therefor to the superintendent, who shall keep a record of the time when and the manner in which the several packages are delivered. The superintendent may, in the superintendent's discretion, require the managers of the respective precincts to call at the superintendent's office to obtain such packages.

(b) The registrars shall, prior to the hour appointed for opening the polls, place in the possession of the managers in each precinct one copy of the certified electors list for such precinct, such list to contain all the information required by law. The list shall indicate the name of any elector who has been mailed or delivered an absentee ballot. The list for a given precinct may be divided into as many alphabetical sections as is deemed necessary. Such list of electors shall be authenticated by the signatures of at least two of the registrars. In a municipal primary, where the parties do not agree to have only one set of managers for a precinct, the electors list shall be delivered to the chief manager of the political party which polled the highest number of votes in the precinct in the immediately preceding election of the presiding officer of the governing authority. In addition, the registrars shall at the same time place in the possession of the managers in each precinct one copy of the list of inactive electors for such precinct. The managers of the respective precincts shall, on delivery to them of such electors lists, return receipts therefor to the registrars, who shall keep a record of the time when and the manner in which the electors lists are delivered. The registrars may, in their discretion, require the managers of the respective precincts to call at their office to obtain such lists.

(c) The registrars may, in their discretion, place a master list containing the names and proper voting precincts of all electors and all inactive electors of the county or municipality at some or all of the polling places located in the county or municipality on the day of each election for use by the poll workers to assist electors in locating their proper precinct.

(d) The superintendent shall provide at the polling place copies of the sample or facsimile ballots for such primary or election as well as a list of the certified write-in candidates for such election in the form as provided by the Secretary of State or appropriate municipal official pursuant to Code Section 21-2-133. (Ga. L. 1894, p. 115, § 9; Civil Code

1895, § 59; Civil Code 1910, § 67; Ga. L. 1922, p. 97, § 5; Code 1933, §§ 34-701, 34-1906; Ga. L. 1946, p. 75, §§ 2, 3; Ga. L. 1949, p. 1204, § 38; Ga. L. 1958, p. 269, § 32; Code 1933, § 34-1303, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, §§ 1, 2; Ga. L. 1970, p. 347, § 22; Ga. L. 1982, p. 1512, § 5; Ga. L. 1987, p. 417, § 7; Ga. L. 1994, p. 1443, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 16/SB 82.)

**The 2011 amendment**, effective July 1, 2011, added subsection (d).

**21-2-408. Poll watchers; designation; duties; removal for interference with election; reports by poll watchers of infractions or irregularities; ineligibility of candidates to serve as poll watchers.**

**Administrative rules and regulations.** — Poll watcher notification to superintendent and requirement to wear badge, Official Compilation of the Rules

and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Primaries and Elections, Chapter 183-1-13.

**21-2-411. Return of checked list of electors and voter's certificates to superintendent; disposition of list and certificates by registrars.**

The chief manager in each precinct shall return a checked list of electors, reflecting those who voted, and the voter's certificates to the superintendent, to be deposited with the registrars. The board of registrars shall keep such voter's certificates for at least 24 months and such electors lists for at least five years. (Ga. L. 1894, p. 115, § 10; Civil Code 1895, § 62; Civil Code 1910, § 72; Code 1933, § 34-901; Code 1933, § 34-1330, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1314.1, as redesignated by Ga. L. 1969, p. 308, § 34; Ga. L. 1978, p. 1004, § 26; Ga. L. 1982, p. 1512, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 52, § 15; Ga. L. 2001, p. 240, § 39; Ga. L. 2012, p. 995, § 29/SB 92.)

**The 2012 amendment**, effective July 1, 2012, deleted “, and the same shall be available for public inspection” from the end of this Code section.

**21-2-413. Conduct of voters, campaigners, and others at polling places generally.**

(a) No elector shall be allowed to occupy a voting compartment or voting machine booth already occupied by another except when giving assistance as permitted by this chapter.

(b) No elector shall remain in a voting compartment or voting machine booth an unreasonable length of time; and, if such elector shall



refuse to leave after such period, he or she shall be removed by the poll officers.

(c) No elector except a poll officer or poll watcher shall reenter the enclosed space after he or she has once left it except to give assistance as provided by this chapter.

(d) No person, when within the polling place, shall electioneer or solicit votes for any political party or body or candidate or question, nor shall any written or printed matter be posted within the room, except as required by this chapter. The prohibitions contained within Code Section 21-2-414 shall be equally applicable within the polling place and no elector shall violate the provisions of Code Section 21-2-414.

(e) No person shall use photographic or other electronic monitoring or recording devices, cameras, or cellular telephones while such person is in a polling place while voting is taking place; provided, however, that a poll manager, in his or her discretion, may allow the use of photographic devices in the polling place under such conditions and limitations as the election superintendent finds appropriate, and provided, further, that no photography shall be allowed of a ballot or the face of a voting machine or DRE unit while an elector is voting such ballot or machine or DRE unit and no photography shall be allowed of an electors list, electronic electors list, or the use of an electors list or electronic electors list. This subsection shall not prohibit the use of photographic or other electronic monitoring or recording devices, cameras, or cellular telephones by poll officials for official purposes.

(f) All persons except poll officers, poll watchers, persons in the course of voting and such persons' children under 18 years of age or any child who is 12 years of age or younger accompanying such persons, persons lawfully giving assistance to electors, duly authorized investigators of the State Election Board, and peace officers when necessary for the preservation of order, must remain outside the enclosed space during the progress of the voting. Notwithstanding any other provision of this chapter, any elector shall be permitted to be accompanied into the enclosed area and into a voting compartment or voting machine booth while voting by such elector's child or children under 18 years of age or any child who is 12 years of age or younger unless the poll manager or an assistant manager determines in his or her sole discretion that such child or children are causing a disturbance or are interfering with the conduct of voting. Children accompanying an elector in the enclosed space pursuant to this subsection shall not in any manner handle any ballot nor operate any function of the voting equipment under any circumstances.

(g) When the hour for closing the polls shall arrive, all electors who have already qualified and are inside the enclosed space shall be

permitted to vote; and, in addition thereto, all electors who are then in the polling place outside the enclosed space, or then in line outside the polling place, waiting to vote, shall be permitted to do so if found qualified, but no other persons shall be permitted to vote.

(h) It shall be the duty of the chief manager to secure the observances of this Code section, to keep order in the polling place, and to see that no more persons are admitted within the enclosed space than are permitted by this chapter. Further, from the time a polling place is opened until the ballots are delivered to the superintendent, the ballots shall be in the custody of at least two poll officers at all times.

(i) No person except peace officers regularly employed by the federal, state, county, or municipal government or certified security guards shall be permitted to carry firearms within 150 feet of any polling place. (Code 1933, § 34-1319, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1313, as redesignated by Ga. L. 1969, p. 308, § 20; Ga. L. 1975, p. 807, § 1; Ga. L. 1978, p. 1004, § 25; Ga. L. 1978, p. 1039, § 3; Ga. L. 1985, p. 496, § 15; Ga. L. 1986, p. 32, § 1; Ga. L. 1992, p. 1815, § 5; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 40; Ga. L. 2003, p. 517, § 46; Ga. L. 2012, p. 995, § 30/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted the present provisions of subsection (e) for the former provisions, which read: "No elector shall use

photographic or other electronic monitoring or recording devices or cellular telephones while such elector is within the enclosed space in a polling place".

**21-2-414. Restrictions on campaign activities and public opinion polling within the vicinity of a polling place; cellular phone use prohibited; prohibition of candidates from entering certain polling places; penalty.**

(a) No person shall solicit votes in any manner or by any means or method, nor shall any person distribute or display any campaign literature, newspaper, booklet, pamphlet, card, sign, paraphernalia, or any other written or printed matter of any kind, nor shall any person solicit signatures for any petition or conduct any exit poll or public opinion poll with voters on any day in which ballots are being cast:

- (1) Within 150 feet of the outer edge of any building within which a polling place is established;
- (2) Within any polling place; or
- (3) Within 25 feet of any voter standing in line to vote at any polling place.

These restrictions shall not apply to conduct occurring in private offices or areas which cannot be seen or heard by such electors.

(b) Rooms under the control or supervision of the board of registrars or absentee ballot clerk in which absentee ballots are being cast shall be considered polling places.

(c) Reserved.

(d) No person whose name appears as a candidate on the ballot being voted upon at a primary, election, special primary, or special election, except a judge of the probate court serving as the election superintendent, shall physically enter any polling place other than the polling place at which that person is authorized to cast his or her ballot for that primary, election, special primary, or special election and, after casting his or her ballot, the candidate shall not return to such polling place until after the poll has closed and voting has ceased or other than to transact business with the board of registrars, so long as the person does not violate any other provision of this Code section. Judges of the probate court serving as election superintendents shall enter polling places only as necessary to fulfill their duties as election superintendents and shall not engage in any practice prohibited by this Code section.

(e) This Code section shall not be construed to prohibit a poll officer from distributing materials, as required by law, which are necessary for the purpose of instructing electors or from distributing materials prepared by the Secretary of State which are designed solely for the purpose of encouraging voter participation in the election being conducted.

(f) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1956, p. 333, § 1; Ga. L. 1961, p. 557, § 1; Code 1933, §§ 34-1307, 34-1938, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, § 3; Ga. L. 1977, p. 174, § 1; Ga. L. 1978, p. 1039, § 1; Ga. L. 1984, p. 674, § 1; Ga. L. 1985, p. 632, § 5; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 382, § 4; Ga. L. 1988, p. 647, § 3; Ga. L. 1989, p. 1084, § 3; Ga. L. 1993, p. 712, § 1; Ga. L. 1994, p. 1406, § 25; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, § 41; Ga. L. 2003, p. 517, § 47; Ga. L. 2005, p. 253, § 58/HB 244; Ga. L. 2010, p. 914, § 22/HB 540; Ga. L. 2012, p. 995, § 31/SB 92.)

**The 2010 amendment**, effective July 1, 2010, in the introductory language of subsection (a), inserted “or display” near the beginning, inserted “paraphernalia,” near the middle, and inserted “solicit signatures for any petition or” near the end, and substituted “day in which ballots are being cast” for “primary or election day”; deleted former subsections (b) through (d); redesignated former subsections (d.1) through (h) as present subsections (b)

through (f), respectively; in subsection (b), inserted “board of” and “being”; and added “or other than to transact business with the board of registrars, so long as the person does not violate any other provision of this Code section” at the end of the first sentence of subsection (d).

**The 2012 amendment**, effective July 1, 2012, substituted “Reserved.” for the former provisions of subsection (c), which read: “No person shall use a cellular tele-



phone or other electronic communication device once such person has been issued a ballot or, in the case of precincts using voting machines or electronic recording voting systems, once the person has en-

tered the voting machine or voting enclosure or booth. This subsection shall not prohibit the use of cellular telephones by poll officials."

## JUDICIAL DECISIONS

**Constitutionality.** — The U.S. Court of Appeals for the 11th Circuit found that a Florida electioneering statute was narrowly tailored to protect the compelling state interest of citizens to vote free from intimidation, interference, and fraud, and did not violate the First Amendment by

banning exit solicitations about non-ballot issues within 100 feet of polling places; accordingly, the district court abused the court's discretion in granting a preliminary injunction. *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213 (11th Cir. 2009).

### 21-2-417. Presentation of identification to poll workers; form of proper identification; swearing of statement when unable to produce proper identification; provisional ballots for those; penalty for false statement under oath.

**Law reviews.** — For survey article on trial practice and procedure, see 60 *Mercer L. Rev.* 397 (2008). For article, "Ethics and Professionalism in the Digital Age: Ninth Annual Georgia Symposium on Ethics and Professionalism: A Symposium

of the Mercer Law Review: Casenote: Constitutional Burdens on the Right to Vote: *Crawford v. Marion County Election Board*, Ian McMullen," see 60 *Mercer L. Rev.* 1007 (2009).

## JUDICIAL DECISIONS

**Constitutionality.** — In an action by a political party challenging the 2006 Photo ID Act, amending O.C.G.A. § 21-2-417, no voter was disenfranchised by the Act and, therefore, the Act did not violate Ga. Const. 1983, Art. II, Sec. I, Para. III. *Democratic Party of Ga., Inc. v. Perdue*, 288 Ga. 720, 707 S.E.2d 67 (2011).

In an action by a political party challenging the 2006 Photo ID Act, amending O.C.G.A. § 21-2-417, the photo ID requirement for in-person voting was authorized by Ga. Const. 1983, Art. II, Sec. I, Para. I as a reasonable procedure for verifying that the individual appearing to vote in person was actually the same person who registered to vote. *Democratic Party of Ga., Inc. v. Perdue*, 288 Ga. 720, 707 S.E.2d 67 (2011).

### **Equal protection.**

Permanent injunction barring enforcement of O.C.G.A. § 21-2-417 was properly denied because under the Fourteenth

Amendment equal protection clause, the legitimate interest of the state in preventing voter fraud justified the insignificant burden of requiring all voters to present photo identification before the voters voted in person. *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009), cert. denied, *NAACP v. Billups*, 556 U.S. 1282, 129 S. Ct. 2770, 174 L. Ed. 2d 271 (2009).

In an action by a political party challenging the 2006 Photo ID Act, amending O.C.G.A. § 21-2-417, the Act did not violate the equal protection clause of Ga. Const. 1983, Art. I, Sec. I, Para. II because the photo ID requirement as implemented was a minimal, reasonable, nondiscriminatory restriction that was warranted by the important regulatory interest of preventing voter fraud. *Democratic Party of Ga., Inc. v. Perdue*, 288 Ga. 720, 707 S.E.2d 67 (2011).

**Organization had standing to chal-**

**lenge.** — Civil rights organization had standing under U.S. Const. Art. III to challenge O.C.G.A. § 21-2-417 requiring voters to present photo identification prior to voting in person because the organization suffered a sufficient injury by forcing

the organization to divert resources to counteract allegedly illegal acts. *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009), cert. denied, *NAACP v. Billups*, 556 U.S. 1282, 129 S. Ct. 2770, 174 L. Ed. 2d 271 (2009).

### **21-2-417.1. Voter identification card.**

**Administrative rules and regulations.** — Application, documentation, and availability of Georgia Voter Identification Card, Official Compilation of the Rules

and Regulations of the State of Georgia, Georgia Election Code, Georgia Voter Identification Card, Sec. 183-1-20-.01.

### **21-2-418. Provisional ballots.**

**Administrative rules and regulations.** — Provisional ballots, Official Compilation of the Rules and Regulations of

the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.06.

### **21-2-419. Validation of provisional ballots; reporting to Secretary of State.**

(a) A person shall cast a provisional ballot on the same type of ballot that is utilized by the county or municipality for mail-in absentee ballots. Such provisional ballot shall be sealed in double envelopes as provided in Code Section 21-2-384 and shall be deposited by the person casting such ballot in a secure, sealed ballot box.

(b) At the earliest time possible after the casting of a provisional ballot, but no later than the day after the primary or election in which such provisional ballot was cast, the board of registrars of the county or municipality, as the case may be, shall be notified by the election superintendent that provisional ballots were cast in the primary or election and the registrars shall be provided with the documents completed by the person casting the provisional ballot as provided in Code Section 21-2-418. Provisional ballots shall be securely maintained by the election superintendent until a determination has been made concerning their status. The board of registrars shall immediately examine the information contained on such documents and make a good faith effort to determine whether the person casting the provisional ballot was entitled to vote in the primary or election.

(c)(1) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person casting the provisional ballot timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall notify the election superintendent and the provisional ballot shall be counted and included in the county's or municipality's certified election results.

(2) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person voting the provisional ballot timely registered and was eligible and entitled to vote in the primary or election but voted in the wrong precinct, then the board of registrars shall notify the election superintendent. The superintendent shall count such person's votes which were cast for candidates in those races for which the person was entitled to vote but shall not count the votes cast for candidates in those races in which such person was not entitled to vote. The superintendent shall order the proper election official at the tabulating center or precinct to prepare an accurate duplicate ballot containing only those votes cast by such person in those races in which such person was entitled to vote for processing at the tabulating center or precinct, which shall be verified in the presence of a witness. Such duplicate ballot shall be clearly labeled with the word "Duplicate," shall bear the designation of the polling place, and shall be given the same serial number as the original ballot. The original ballot shall be retained.

(3) If the registrars determine that the person casting the provisional ballot did not timely register to vote or was not eligible or entitled to vote in such primary or election or shall be unable to determine within three days following such primary or election whether such person timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall so notify the election superintendent and such ballot shall not be counted. The election superintendent shall mark or otherwise document that such ballot was not counted and shall deliver and store such ballots with all other ballots and election materials as provided in Code Section 21-2-500.

(d)(1) The board of registrars shall notify in writing those persons whose provisional ballots were not counted that their ballots were not counted because of the inability of the registrars to verify that the persons timely registered to vote or other proper reason. The registrars shall process the official voter registration form completed by such persons pursuant to Code Section 21-2-418 and shall add such persons to the electors list if found qualified.

(2) The board of registrars shall notify in writing those electors who voted in the wrong precinct and whose votes were partially counted of their correct precinct.

(e) The board of registrars shall complete a report in a form designated by the Secretary of State indicating the number of provisional ballots cast and counted in the primary or election. (Code 1981, § 21-2-419, enacted by Ga. L. 2002, p. 598, § 1-6; Ga. L. 2003, p. 151, § 1; Ga. L. 2008, p. 781, § 14/HB 1112; Ga. L. 2010, p. 914, § 23/HB 540.)



**The 2010 amendment**, effective July 1, 2010, in paragraphs (c)(1) through (c)(3), substituted “three days” for “two days”; and substituted “county’s” for “county” near the end of paragraph (c)(1).

**Administrative rules and regula-**

**tions.** — Provisional ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.06.

## PART 2

### PRECINCTS USING PAPER BALLOTS

#### **21-2-433. Admission of electors to enclosed space; detachment of ballots from stubs and distribution of ballots to electors; return of canceled ballots to superintendent.**

(a) No elector shall enter the enclosed space behind the guardrail provided for in subsection (a) of Code Section 21-2-267 until he or she is found entitled to vote.

(b) As soon as an elector has been admitted within the enclosed space, the poll officer having charge of the ballots in precincts in which ballots are used shall detach a ballot from the stub and give it to the elector, first folding it so that the words and figures printed on the face shall not be visible, and no ballots shall be deposited in the ballot box unless folded in the same manner. If an elector’s right to vote has been challenged for cause under Code Section 21-2-230, the elector shall be entitled to vote a challenged ballot. Not more than one ballot shall be detached from its stub in any book of ballots at any one time. Not more than one ballot shall be given to an elector; but, if an elector inadvertently spoils a ballot, such elector may obtain another upon returning the spoiled one. The ballots thus returned shall be immediately canceled and at the close of the polls shall be enclosed in an envelope, which shall be sealed and returned to the superintendent. (Ga. L. 1922, p. 97, § 4; Code 1933, § 34-1905; Ga. L. 1943, p. 290, § 1; Code 1933, § 34-1313, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Code 1933, § 34-1318, as redesignated by Ga. L. 1969, p. 308, § 12; Ga. L. 1983, p. 140, § 1; Ga. L. 1994, p. 1443, § 7; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 32/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted “elector shall be entitled to vote a challenged ballot” for “poll officer shall write the word ‘Challenged’ and the alleged cause of challenge on the back of the ballot” in the second sentence of subsection (b).

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

**21-2-434. Restrictions as to removal of ballots from book or polling place; deposit of official ballots in box; disposition of unofficial ballots.**

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

**21-2-435. Procedure as to marking and depositing of ballots.**

(a) In precincts in which ballots are used, the elector, after receiving his or her ballot, shall retire to one of the voting compartments and draw the curtain or shut the screen or door and shall then prepare his or her ballot; provided, however, that an elector may, before entering the voting booth, ask for instructions concerning the manner of voting, and a poll officer shall give him or her such instructions; but no person giving an elector such instructions shall in any manner request, suggest, or seek to persuade or induce any such elector to vote any particular ticket or for any particular candidate or for or against any particular question. After giving such instructions and before the elector closes the booth or votes, the poll officer shall retire and the elector shall forthwith vote.

(b) At primaries, the elector shall prepare his or her ballot in the following manner: He or she shall vote for the candidates of his or her choice for nomination or election, according to the number of persons to be voted for by him or her, for each office, by making a cross (X) or check (✓) mark in the square opposite the name of each candidate. No elector shall be permitted to cast a write-in ballot in a primary. A ballot upon which a voter has marked out or struck through the name of a candidate for whom the voter does not intend to cast his or her vote may be counted if the ballot clearly indicates that candidate for whom the voter desired to cast his or her vote.

(c) At elections, the elector shall prepare his or her ballot in the following manner:

(1) He or she may vote for the candidates of his or her choice for each office to be filled according to the number of persons to be voted for by him or her for each office, by making a cross (X) or check (✓) mark in the square opposite the name of the candidate;

(2) He or she may write, in the blank space provided therefor, any name not already printed on the ballot, and such insertion shall count as a vote without the marking of a cross (X) or check (✓) mark;

(3) Reserved;

(4) If he or she desires to vote for the presidential electors nominated by any party or body, he or she may make a cross (X) or

check (✓) mark in the appropriate square at the left of the names of the candidates for President and Vice President of such party or body;

(5) In case of a question submitted to the vote of the electors, he or she may make a cross (X) or check (✓) mark in the appropriate square opposite the answer which he or she desires to give.

(d) Before leaving the voting compartment, the elector shall fold his or her ballot, without displaying the markings thereon, in the same way it was folded when received by him or her; and he or she shall then leave the compartment and exhibit the number strip of the ballot to a poll officer who shall ascertain by an inspection of the number appearing thereon whether the ballot so exhibited to him or her is the same ballot which the elector received before entering the voting compartment. If it is the same, the poll officer shall direct the elector, without unfolding the ballot, to remove the perforated portion containing the number, and the elector shall immediately deposit the ballot in the ballot box. The number strip shall be deposited in the stub box provided for such purpose and the number strips shall be retained with the ballots and other stubs. Any ballot, other than one which has been challenged for cause under Code Section 21-2-230, deposited in a ballot box at any primary or election without having such number removed shall be void and shall not be counted. (Ga. L. 1941, p. 324, § 2; Code 1933, § 34-1314, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 851, § 7; Ga. L. 1968, p. 871, § 12; Code 1933, § 34-1319, as redesignated by Ga. L. 1969, p. 308, § 13; Ga. L. 1983, p. 140, § 1; Ga. L. 1984, p. 133, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, Ex. Sess., p. 325, § 10; Ga. L. 2012, p. 995, § 33/SB 92.)

**The 2012 amendment**, effective July 1, 2012, in subsection (d), deleted the former fourth sentence, which read: "If the ballot is marked 'Challenged,' the numbered perforated portion shall not be

removed and the ballot shall be deposited with it attached." and substituted "which has been challenged for cause under Code Section 21-2-230," for "marked 'Challenged,'" in the last sentence.

## 21-2-436. Duties of poll officers after the close of the polls.

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## 21-2-437. Procedure as to count and return of votes generally; void ballots.

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations of

the State of Georgia, Georgia Election Code, Absentee Voting, Chapter 183-1-14-.07.



**21-2-438. Ballots identifying voter, not marked, or improperly marked declared void.**

**Administrative rules and regulations.** — Definition of vote and review of ballots, Ga. Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Election Code, Returns of Primaries and Elections, Sec. 183-1-15-.02.

**21-2-439. Decisions concerning questionable marks or defaced or mutilated ballots.**

**Administrative rules and regulations.** — Definition of vote and review of ballots, Ga. Official Compilation of the Rules and Regulations of the State of

Georgia, Georgia Election Code, Returns of Primaries and Elections, Sec. 183-1-15-.02.

**21-2-440. Duty of poll officers to sign general returns; posting of copy of returns; delivery of copy of materials to superintendent.**

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

PART 3

PRECINCTS USING VOTING MACHINES

**21-2-452. Admission of electors to enclosed space; voting procedure generally; procedure as to write-in votes; voting by electors whose right to vote is challenged; disabled voters.**

**Administrative rules and regulations.** — Use of absentee ballots when voting machines are inaccessible, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Voting Machines — Vote Recorders, Sec. 183-1-12-.10.

PART 5

PRECINCTS USING OPTICAL SCANNING VOTING EQUIPMENT

**21-2-480. Caption for ballots; party designations; form and arrangement.**

(a) At the top of each ballot for an election in a precinct using optical scanning voting equipment shall be printed in prominent type the words “OFFICIAL BALLOT,” followed by the designation of the precinct for which it is prepared and the name and date of the election.

(b) Immediately under this caption on a ballot presenting the names of candidates for election to office, the following directions shall be printed, insofar as the same may be appropriate for the election involved:

(1) Optical scanners using ovals or squares. To vote blacken the oval or square ( ☐ ☐ ) next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually write his or her name in the write-in section and blacken the oval or square next to the write-in section. If you spoil your ballot, do not erase, but ask for a new ballot. Use only the pen or pencil provided.

(2) Optical scanners using arrows. To vote, complete the arrow ( ☐ → ) to the right of the name of the candidate for whom you wish to vote. To vote for a person whose name is not on the ballot, manually write his or her name in the write-in space provided and complete the arrow. If you spoil your ballot, do not erase, but ask for a new ballot. Use only the pen or pencil provided.

(3) Marks made in violation of these directions shall be disregarded in the counting of the votes cast. The names of the persons inserted on the ballot by the elector shall be manually written only within the write-in section and the insertion of such names outside such section or by the use of a sticker, paster, stamp, or other printed or written matter is prohibited.

(c) The ballot for each candidate or group of candidates nominated by a party or body shall contain the name or designation of the party or body.

(d) The titles of offices may be arranged horizontally with the names of candidates for an office arranged transversely under the title of the office. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot.

(e) The form and arrangement of ballots shall be prepared by the superintendent.

(f) Unless a candidate has filed with his or her nominating petition a certificate from a political party or body attesting that such candidate is the nominee of such party or body by virtue of having been nominated in a duly constituted party or body convention, the candidate's name shall appear on the ballot as an independent.

(g) When presidential electors are to be elected, the ballot shall not list the individual names of the candidates for presidential electors but shall list the names of each political party and body and the names of the political party or body candidates for the office of President and Vice President. The individual names or the nominees of each political party or body for such offices shall be posted at each polling place with the

sample ballots required by subsection (c) of Code Section 21-2-375 arranged alphabetically under the names of the candidates of the party or body for President and Vice President of the United States. A vote for the candidates for President and Vice President of a political party or body shall be deemed to be a vote for each of the candidates for presidential electors of such political party or body.

(h) When proposed constitutional amendments or other questions are submitted to a vote of the electors, each amendment or other question so submitted may be printed upon the ballot below the groups of candidates for the various offices. Proposed constitutional amendments so submitted shall be printed in the order determined by the Constitutional Amendments Publication Board and in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include the short title or heading provided for in subsection (c) of Code Section 50-12-101. Unless otherwise provided by law, any other state-wide questions or questions to be presented to the electors of more than one county so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the Secretary of State and shall include a short title or heading in bold face at the beginning of each such question on the ballot; and any local questions so submitted shall be printed in brief form as directed by the General Assembly or, in the event of a failure to so direct, the form shall be determined by the superintendent. Next to the question there shall be placed the words "YES" and "NO" together with appropriate ovals or squares or broken arrows to be marked.

(i) The ballots shall vary in form only as the names of precincts, offices, candidates, or this chapter may require. (Code 1981, § 21-2-480, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 29, § 3; Ga. L. 2001, p. 269, § 23; Ga. L. 2003, p. 517, § 52; Ga. L. 2012, p. 995, § 34/SB 92.)

**The 2012 amendment**, effective July 1, 2012, in the third sentence of subsection (h), inserted "or questions to be presented to the electors of more than one county" and inserted "and shall include a short title or heading in bold face at the beginning of each such question on the ballot".

**Administrative rules and regula-**

**tions.** — Spoiled absentee ballots, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.06.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.



**21-2-483. Counting of ballots; public accessibility to tabulating center and precincts; execution of ballot recap forms; preparation of duplicate ballots.**

(a) In primaries and elections in which optical scanners are used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent. All persons who perform any duties at the tabulating center shall be deputized by the superintendent, and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be inside the area designated for officers deputized to conduct the count.

(b) All proceedings at the tabulating center and precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the superintendent or the superintendent's authorized deputy shall touch any ballot or ballot container.

(c) At the tabulating center, the seal on each container of ballots shall be inspected, and it shall be certified that the seal has not been broken before the container is opened. The ballots and other contents of the container shall then be removed, and the ballots shall be prepared for processing by the tabulating machines. The ballots of each polling place shall be plainly identified and cannot be commingled with the ballots of other polling places.

(d) Upon completion of tabulation of the votes, the superintendent shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

- (1) The number of valid ballots, including any that are damaged;
- (2) The number of spoiled and invalid ballots; and
- (3) The number of unused ballots.

The superintendent shall cause to be placed one copy of the recap form and the defective, spoiled, and invalid ballots, each enclosed in an envelope, in the ballot supply container.

(e) For any election for which there is a qualified write-in candidate, the feature on precinct count and central count tabulators allowing separation of write-in votes shall be utilized. If any vote cast on the write-in ballot in combination with the vote cast for the same office on the ballot exceeds the allowed number for the office, the vote cast for that office only shall not be counted. In the discretion of the superintendent, either a duplicate ballot shall be made on which any invalid vote shall be omitted or the write-in ballot and the ballot shall be counted in such manner as may be prescribed by State Election Board rules, omitting the invalid vote.

(f) If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be processed by the tabulating machine, the superintendent, in his or her discretion, may order the proper election official at the tabulating center or precinct to prepare a true duplicate copy for processing with the ballots of the same polling place, which shall be verified in the presence of a witness. All duplicate ballots shall be clearly labeled by the word “duplicate,” shall bear the designation of the polling place, and shall be given the same serial number as the defective ballot. The defective ballot shall be retained.

(g)(1) The central tabulator shall be programmed to reject any ballot, including absentee ballots, on which an overvote is detected and any ballot so rejected shall be manually reviewed by the vote review panel described in this Code section to determine the voter’s intent as described in subsection (c) of Code Section 21-2-438.

(2)(A) In a partisan election, the vote review panel shall be composed of the election superintendent or designee thereof and one person appointed by the county executive committee of each political party and body having candidates whose names appear on the ballot for such election, provided that, if there is no organized county executive committee for a political party or body, the person shall be appointed by the state executive committee of the political party or body. In a nonpartisan election, the panel shall be composed of the election superintendent or designee thereof and two electors of the county, in the case of a county election, or the municipality, in the case of a municipal election, appointed by the chief judge of the superior court of the county in which the election is held or, in the case of a municipality which is located in more than one county, of the county in which the city hall of the municipality is located. The panel shall manually review all ballots rejected by the tabulator under paragraph (1) of this subsection and shall determine by majority vote whether the elector’s intent can be determined as described in subsection (c) of Code Section 21-2-438 and, if so, said vote shall be counted as the elector intended. In the event of a tie vote by the vote review panel, the vote of the election superintendent or designee thereof shall control.

(B) The election superintendent may create multiple vote review panels in accordance with subparagraph (A) of this paragraph to handle the processing of such ballots more efficiently. Upon the creation of such panels, the election superintendent shall designate one of the panels as the chief vote review panel. In the event of a disagreement on such additional panels, the ballots in question shall be reviewed by the chief vote review panel and decided in accordance with the procedures contained in subparagraph (A) of this paragraph.

(h) The official returns of the votes cast on ballots at each polling place shall be printed by the tabulating machine. The returns thus prepared shall be certified and promptly posted. The ballots, spoiled, defective, and invalid ballots, and returns shall be filed and retained as provided by law. (Code 1981, § 21-2-483, enacted by Ga. L. 1998, p. 1231, § 41; Ga. L. 2003, p. 517, § 54; Ga. L. 2011, p. 683, § 17/SB 82.)

**The 2011 amendment**, effective July 1, 2011, deleted former paragraph (g)(1), which read: “The precinct tabulator shall be programmed to return to the voter at the time that the voter inserts the ballot any ballot on which an overvote is indicated, along with any ballot that cannot be processed by the tabulator for reevaluation or correction or spoiling of the ballot, and a new ballot shall be issued if the voter desires to vote another ballot in order to correct mistakes, overvotes, or other problems.”; redesignated former subparagraph (g)(2)(A) as present paragraph (g)(1); redesignated former subparagraph (g)(2)(B) as present subparagraph (g)(2)(A); in subparagraph (g)(2)(A),

substituted “paragraph (1) of this subsection” for “subparagraph (A) of this paragraph” in the third sentence; and added present subparagraph (g)(2)(B).

**Administrative rules and regulations.** — Poll watcher notification to superintendent and requirement to wear badge, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Preparation for and Conduct of Primaries and Elections, Chapter 183-1-13.

Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## **21-2-484. Requirements for ballot recap form; delivery.**

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations

of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## **ARTICLE 12**

### **RETURNS**

## **21-2-492. Computation and canvassing of returns; notice of when and where returns will be computed and canvassed; blank forms for making statements of returns; swearing of assistants.**

The superintendent shall arrange for the computation and canvassing of the returns of votes cast at each primary and election at his or her office or at some other convenient public place at the county seat or municipality with accommodations for those present insofar as space permits. An interested candidate or his or her representative shall be permitted to keep or check his or her own computation of the votes cast in the several precincts as the returns from the same are read, as directed in this article. The superintendent shall give at least one week’s notice prior to the primary or election by publishing same in a conspicuous place in the superintendent’s office, of the time and place when and where he or she will commence and hold his or her sessions



for the computation and canvassing of the returns; and he or she shall keep copies of such notice posted in his or her office during such period. The superintendent shall procure a sufficient number of blank forms of returns made out in the proper manner and headed as the nature of the primary or election may require, for making out full and fair statements of all votes which shall have been cast within the county or any precinct therein, according to the returns from the several precincts thereof, for any person voted for therein, or upon any question voted upon therein. The assistants of the superintendent in the computation and canvassing of the votes shall be first sworn by the superintendent to perform their duties impartially and not to read, write, count, or certify any return or vote in a false or fraudulent manner. (Code 1933, § 34-1503, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2012, p. 995, § 35/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted “superintendent’s office” for “county courthouse or city hall” in the third sentence of this Code section.

**21-2-493. Computation, canvassing, and tabulation of returns; investigation of discrepancies in vote counts; recount procedure; certification of returns; change in returns.**

(a) The superintendent shall, at or before 12:00 Noon on the day following the primary or election, at his or her office or at some other convenient public place at the county seat or in the municipality, of which due notice shall have been given as provided by Code Section 21-2-492, publicly commence the computation and canvassing of the returns and continue the same from day to day until completed. For this purpose the superintendent may organize his or her assistants into sections, each of which may simultaneously proceed with the computation and canvassing of the returns from various precincts of the county or municipality in the manner provided by this Code section. Upon the completion of such computation and canvassing, the superintendent shall tabulate the figures for the entire county or municipality and sign, announce, and attest the same, as required by this Code section.

(b) The superintendent, before computing the votes cast in any precinct, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and

palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had. Such excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession. The superintendent shall then examine all the registration and primary or election documents whatever relating to such precinct in the presence of representatives of each party, body, and interested candidate. Such examination may, if the superintendent deems it necessary, include a recount or recanvass of the votes of that precinct and a report of the facts of the case to the district attorney where such action appears to be warranted.

(c) In precincts in which paper ballots have been used, the superintendent may require the production of the ballot box and the recount of the ballots contained in such ballot box, either generally or respecting the particular office, nomination, or question as to which the excess exists, in the discretion of the superintendent, and may require the correction of the returns in accordance with the result of such recount. If the ballot box is found to contain more ballots than there are electors registered in such precinct or more ballots than the number of voters who voted in such precinct at such primary or election, the superintendent may, in his or her discretion, exclude the poll of that precinct, either as to all offices, candidates, questions, or parties and bodies or as to any particular offices, candidates, questions, or parties and bodies, as to which such excess exists.

(d) In precincts in which voting machines have been used, the superintendent may require a recanvass of the votes recorded on the machines used in the precinct, as provided in Code Section 21-2-495.

(e) In precincts in which paper ballots have been used, the general returns made by the poll officers from the various precincts shall be read one after another in the usual order, slowly and audibly, by one of the assistants who shall, in each case of a return from a precinct in which ballots were used, read therefrom the number of ballots issued, spoiled, canceled, and cast, respectively, whereupon the assistant having charge of the records of the superintendent showing the number of ballots furnished for each precinct, including the number of stubs and unused ballots and spoiled and canceled ballots returned, shall publicly announce the number of the same respectively; and, unless it appears by such number or calculations therefrom that such records and such general return correspond, no further returns shall be read from the latter until all discrepancies are explained to the satisfaction of the superintendent.

(f) In precincts in which voting machines have been used, there shall be read from the general return the identifying number or other designation of each voting machine used and the numbers registered on

the protective counter or device on each machine prior to the opening of the polls and immediately after the close of the same, whereupon the assistant having charge of the records of the superintendent showing the number registered on the protective counter or device of each voting machine prior to delivery at the polling place shall publicly announce the numbers so registered; and, unless it appears that such records and such general return correspond, no further returns shall be read from the latter until any and all discrepancies are explained to the satisfaction of the superintendent.

(g) In precincts in which paper ballots have been used, when the records agree with such returns regarding the number of ballots and the number of votes recorded for each candidate, such votes for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return which has been returned unsealed; and the figures announced shall be compared by other assistants with the general return which has been returned sealed. The figures announced for all precincts shall be compared by one of the assistants with the tally papers from the respective precincts. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, tally papers, and other papers in his or her possession relating to the same precinct. If the tally papers and sealed general return sheet agree, the unsealed general return shall be immediately corrected to conform thereto. In every other case the superintendent shall immediately cause the ballot box of the precinct to be opened and the vote therein to be recounted in the presence of interested candidates or their representatives; and, if the recount shall not be sufficient to correct the error, the superintendent may summon the poll officers to appear immediately with all election papers in their possession.

(h) In precincts in which voting machines have been used, when the records agree with the returns regarding the number registered on the voting machine, the votes recorded for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return sheet which has been returned unsealed; and the figures announced shall be compared by other assistants with the duplicate return sheet which has been returned sealed. If the voting machine is of the type equipped with a mechanism for printing paper proof sheets, such general and duplicate return sheets shall also be compared with such proof sheets, which have been returned as aforesaid. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, proof sheets, and other papers in his or her possession relating to the same precinct. Such proof sheets shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and, if the proper proof sheets, properly identified, shall be mutually consistent and if the general and duplicate returns or either of such returns from such precinct shall not correspond with such



proof sheets, they shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent.

(i) If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.

(j) The superintendent shall see that the votes shown by each absentee ballot are added to the return received from the precinct of the elector casting such ballot.

(k) As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns shall then be certified by the superintendent in the manner required by this chapter. Such returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.

(l) In such case where the results of an election contest change the returns so certified, a corrected return shall be certified and filed by the superintendent which makes such corrections as the court orders. (Ga. L. 1943, p. 347, § 1; Code 1933, § 34-1504, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 29; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1987, p. 34, § 1; Ga. L. 1992, p. 1, § 5; Ga. L. 1992, p. 56, § 1; Ga. L. 1997, p. 590, § 37; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 25; Ga. L. 2003, p. 517, § 55; Ga. L. 2008, p. 817, § 4/HB 1098; Ga. L. 2011, p. 683, § 18/SB 82.)

**The 2011 amendment**, effective July 1, 2011, substituted “Monday” for “seventh day” in the last sentence of subsection (k).

**Administrative rules and regula-**

**tions.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## JUDICIAL DECISIONS

**Certification of election results.** — Trial court did not err in ruling that certification by a county board of elections and registration triggered the five-day filing period of O.C.G.A. § 21-2-524(a) because the five-day period of O.C.G.A.

§ 21-2-524(a) for filing a petition to contest the election results for a county office began to run when the county superintendent had officially consolidated and certified the returns for the particular office; because the Secretary of State only certi-

fies election returns for federal and state offices, the sole election official specified in the Georgia Code as having responsibility for consolidation and certification of elec-

tion results for other offices is the local superintendent. *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

#### **21-2-494. Computation and certification of write-in votes.**

**Law reviews.** — For survey article on local government law, see 59 *Mercer L. Rev.* 285 (2007).

#### **21-2-495. Procedure for recount or recanvass of votes; losing candidate's right to a recount.**

(a) In precincts where paper ballots have been used, the superintendent may, either of his or her own motion or upon petition of any candidate or political party, order the recount of all the ballots for a particular precinct or precincts for one or more offices in which it shall appear that a discrepancy or error, although not apparent on the face of the returns, has been made. Such recount may be held at any time prior to the certification of the consolidated returns by the superintendent and shall be conducted under the direction of the superintendent. Before making such recount, the superintendent shall give notice in writing to each candidate and to the county or municipal chairperson of each party or body affected by the recount. Each such candidate may be present in person or by representative, and each such party or body may send two representatives to be present at such recount. If upon such recount, it shall appear that the original count by the poll officers was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.

(b) In precincts where voting machines have been used, whenever it appears that there is a discrepancy in the returns recorded for any voting machine or machines or that an error, although not apparent on the face of the returns, exists, the superintendent shall, either of his or her own motion or upon the sworn petition of three electors of any precinct, order a recanvass of the votes shown on that particular machine or machines. Such recanvass may be conducted at any time prior to the certification of the consolidated returns by the superintendent. In conducting such recanvass, the superintendent shall summon the poll officers of the precinct; and such officers, in the presence of the superintendent, shall make a record of the number of the seal upon the voting machine or machines and the number of the protective counter or other device; shall make visible the registering counters of each such machine; and, without unlocking the machine against voting, shall recanvass the vote thereon. Before making such recanvass, the superintendent shall give notice in writing to the custodian of voting machines, to each candidate, and to the county or municipal chairper-

son of each party or body affected by the recanvass. Each such candidate may be present in person or by representative, and each of such parties or bodies may send two representatives to be present at such recanvass. If, upon such recanvass, it shall be found that the original canvass of the returns has been correctly made from the machine and that the discrepancy still remains unaccounted for, the superintendent, with the assistance of the custodian, in the presence of the poll officers and the authorized candidates and representatives, shall unlock the voting and counting mechanism of the machine and shall proceed thoroughly to examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in returns from such machine. Each counter shall be reset at zero before it is tested, after which it shall be operated at least 100 times. After the completion of such examination and test, the custodian shall then and there prepare a statement, in writing, giving in detail the result of the examination and test; and such statement shall be witnessed by the persons present and shall be filed with the superintendent. If, upon such recanvass, it shall appear that the original canvass of the returns by the poll officers was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly; provided, however, that in the case of returns from any precinct wherein the primary or election was held by the use of a voting machine equipped with a mechanism for printing paper proof sheets, such proof sheets, if mutually consistent, shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and there shall not be considered to be any discrepancy or error in the returns from any such precinct, such as to require a recanvass of the vote, if all available proof sheets, from the voting machine used therein, identified to the satisfaction of the superintendent and shown to his or her satisfaction to have been produced from proper custody, shall be mutually consistent; and, if the general and duplicate returns, or either of such returns from such precincts shall not correspond with such proof sheets, they and all other papers being prepared by the superintendent shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent by the weight of the evidence; and only in such case shall the vote of such precinct be recanvassed under this Code section.

(c)(1) Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in an election or who has been declared eligible for a run-off primary or election and the number of votes received by any other candidate or candidates not declared so nominated or elected or eligible for a runoff shall be not more than 1 percent of the total votes which were



cast for such office therein, any such candidate or candidates receiving a sufficient number of votes so that the difference between his or her vote and that of a candidate declared nominated, elected, or eligible for a runoff is not more than 1 percent of the total votes cast, within a period of two business days following the certification of the election results, shall have the right to a recount of the votes cast, if such request is made in writing by the losing candidate. If the office sought is a federal or state office voted upon by the electors of more than one county, the request shall be made to the Secretary of State who shall direct that the recount be performed in all counties in which electors voted for such office and notify the superintendents of the several counties involved of the request. In all other cases, the request shall be made to the superintendent. The superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(2) Whenever the difference between the number of votes for approval or rejection of a constitutional amendment or binding referendum question shall be not more than 1 percent of the total votes which were cast on such amendment or question therein, within a period of two business days following the certification of the election results, the Constitutional Amendments Publication Board shall be authorized in its discretion to call for a recount of the votes cast with regard to such amendment or question. In the case of a constitutional amendment or state-wide referendum question or a question voted upon by the electors of more than one county, the board shall direct the Secretary of State to cause a recount to be performed with regard to such amendment or question in all counties involved and notify the superintendents of the recount. In the case of questions voted upon by the electors of only one county or municipality, the board shall direct the Secretary of State to cause a recount to be conducted by the county or municipality involved and the Secretary of State shall notify the superintendent involved of the recount. Upon notification, the superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(d) Any other provision of this Code section to the contrary notwithstanding, a candidate for a federal or state office voted upon by the electors of more than one county may petition the Secretary of State for a recount or recanvass of votes, as appropriate, when it appears that a discrepancy or error, although not apparent on the face of the returns,

has been made. The recount or recanvass may be ordered in the discretion of the Secretary of State in any and all counties in which electors voted for such office, and said recount or recanvass may be held at any time prior to the certification of the consolidated returns by the Secretary of State. A recount or recanvass shall be conducted by the appropriate superintendent or superintendents in the manner and pursuant to the procedures otherwise provided in this Code section for a recount or recanvass, as appropriate. The petition pursuant to this Code section shall be in writing and signed by the person or persons requesting the recount or recanvass. A petition shall set forth the discrepancies or errors and any evidence in support of the petitioner's request for a recount or recanvass and shall be verified. The Secretary of State may require the petitioner or other persons to furnish additional information concerning the apparent discrepancies or errors in the counting or canvassing of votes. (Ga. L. 1941, p. 432, §§ 1-4, 8; Ga. L. 1962, p. 678, § 1; Code 1933, § 34-1505, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1975, p. 806, § 1; Ga. L. 1976, p. 248, § 1; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 140, § 1; Ga. L. 1986, p. 382, § 5; Ga. L. 1986, p. 855, § 5; Ga. L. 1987, p. 34, § 1; Ga. L. 1995, p. 1027, § 11; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 24; Ga. L. 2003, p. 517, § 56; Ga. L. 2011, p. 683, § 19/SB 82.)

**The 2011 amendment**, effective July 1, 2011, designated the existing provisions of subsection (c) as paragraph (c)(1); and added paragraph (c)(2).

### JUDICIAL DECISIONS

**Differences in recounting procedure for paper ballots and electronic ballots.** — Trial court did not err in granting the Secretary of State, the Governor, and the Georgia State Election Board summary judgment in voters' action challenging the use of direct recording electronic equipment because tangible ballots with custodial linkage to individual voters were not an absolute requirement for every voting system; although the recount

law does not specifically set out recount procedures for electronic voting systems, it does clearly recognize that recount procedures for paper ballots necessarily differ from recanvassing procedures for mechanical voting machines. *Favorito v. Handel*, 285 Ga. 795, 684 S.E.2d 257 (2009).

**Cited in** *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

### **21-2-496. Preparation and filing by superintendent of four copies of consolidated return of primary; electronic filing; superintendent to furnish final copy of each ballot used for primary.**

(a) Each county and municipal superintendent shall prepare four copies of the consolidated return of the primary to be certified by the superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows:

(1) One copy to be posted at the office of the election superintendent for the information of the public;

(2) One copy to be filed in the superintendent's office;

(3) One copy to be forwarded to the Secretary of State together with a copy of each precinct return, the numbered list of voters of each precinct, and the returns and the numbered list of voters for absentee electors; and

(4) One copy to be sealed and filed with the clerk of the superior court, in the case of a county election, or with the city clerk, in the case of a municipal election, as required by Code Section 21-2-500.

(b) The Secretary of State is authorized to provide a method by which the election superintendent can file the results of primaries and elections electronically. Once the Secretary of State provides such a method of filing, the election superintendent shall file a copy of the election returns electronically in the manner prescribed by the Secretary of State in addition to the filing provided in subsection (a) of this Code section. The Secretary of State is authorized to promulgate such rules and regulations as necessary to provide for such an electronic filing.

(c) Each county and municipal superintendent shall, upon certification, furnish to the Secretary of State in a manner determined by the Secretary of State a final copy of each ballot used for such primary. (Ga. L. 1890-91, p. 210, § 2; Civil Code 1895, § 114; Civil Code 1910, § 128; Code 1933, § 34-3202; Code 1933, § 34-1507, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1979, p. 631, § 2; Ga. L. 1982, p. 1512, § 5; Ga. L. 1996, p. 145, § 19; Ga. L. 1998, p. 295, § 1; Ga. L. 2008, p. 817, § 5/HB 1098; Ga. L. 2012, p. 995, §§ 36, 37/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted "posted at the office of the election superintendent" for "posted at the county courthouse or, in the case of a

municipal election, at the city hall" in paragraph (a)(1); and added subsection (c).

**21-2-497. Preparation and filing by superintendent of four copies of consolidated return of elections; superintendent to furnish final copy of each ballot used for election.**

(a) Each county and municipal superintendent shall prepare four copies of the consolidated return of the election to be certified by the superintendent on forms furnished by the Secretary of State, such consolidated returns to be filed immediately upon certification as follows:



(1) One copy to be posted at the office of the election superintendent for the information of the public;

(2) One copy to be filed and recorded as a permanent record in the minutes of the superintendent's office;

(3) One copy to be sealed and filed with the clerk of the superior court, in the case of a county election, or with the city clerk, in the case of a municipal election, as required by Code Section 21-2-500; and

(4) One copy to be returned immediately to the Secretary of State unless required as follows:

(A) In the case of election of federal and state officers, a separate return showing totals of the votes cast for each of such officers respectively shall be forwarded by the superintendent to the Secretary of State on forms furnished by the Secretary of State;

(B) In the case of referendum elections provided for by an Act of the General Assembly, the returns shall immediately be certified by the authority holding such election to the Secretary of State, along with the precinct returns and numbered list of voters for each precinct. In addition thereto, the official citation of the Act involved and the purpose of such election shall be sent to the Secretary of State at the same time. The Secretary of State shall maintain a permanent record of such certifications;

(C) In the case of elections on constitutional amendments, the returns shall be certified immediately to the Secretary of State. Upon receiving the certified returns from the various superintendents, the Secretary of State shall immediately proceed to canvass and tabulate the votes cast on such amendments and certify the results to the Governor; and

(D) In the case of election for presidential electors, a separate return shall be prepared by each superintendent and certified immediately to the Secretary of State.

(b) Each county and municipal superintendent shall, upon certification, furnish to the Secretary of State in a manner determined by the Secretary of State a final copy of each ballot used for such election. (Ga. L. 1890-91, p. 210, § 2; Civil Code 1895, § 114; Civil Code 1910, § 128; Ga. L. 1918, p. 154, §§ 1, 2; Ga. L. 1921, p. 232, § 1; Code 1933, §§ 34-2201, 34-2202, 34-3202; Code 1933, § 34-1508, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1982, p. 3, § 21; Ga. L. 1982, p. 1512, § 5; Ga. L. 1983, p. 884, § 6-6; Ga. L. 1986, p. 32, § 1; Ga. L. 1986, p. 855, § 6; Ga. L. 1987, p. 34, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1995, p. 1027, § 12; Ga. L.

1998, p. 295, § 1; Ga. L. 2008, p. 817, § 6/HB 1098; Ga. L. 2012, p. 995, § 38/SB 92.)

**The 2012 amendment**, effective July 1, 2012, designated the existing provisions as subsection (a); substituted “office of the election superintendent” for “county courthouse or, in the case of a municipal election, at the city hall” in paragraph (a)(1); and added subsection (b).

**21-2-499. Duty of Secretary of State as to tabulation, computation, and canvassing of votes for state and federal officers; certification of presidential electors by Governor.**

(a) Upon receiving the certified returns of any election from the various superintendents, the Secretary of State shall immediately proceed to tabulate, compute, and canvass the votes cast for all candidates described in subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the electors of more than one county and shall thereupon certify and file in his or her office the tabulation thereof. In the event an error is found in the certified returns presented to the Secretary of State or in the tabulation, computation, or canvassing of votes as described in this Code section, the Secretary of State shall notify the county submitting the incorrect returns and direct the county to correct and recertify such returns. Upon receipt by the Secretary of State of the corrected certified returns of the county, the Secretary of State shall issue a new certification of the results and shall file the same in his or her office.

(b) The Secretary of State shall also, upon receiving the certified returns for presidential electors, proceed to tabulate, compute, and canvass the votes cast for each slate of presidential electors and shall immediately lay them before the Governor. Not later than 5:00 P.M. on the fourteenth day following the date on which such election was conducted, the Secretary of State shall certify the votes cast for all candidates described in subparagraph (a)(4)(A) of Code Section 21-2-497 and upon all questions voted for by the electors of more than one county and shall no later than that same time lay the returns for presidential electors before the Governor. The Governor shall enumerate and ascertain the number of votes for each person so voted and shall certify the slates of presidential electors receiving the highest number of votes. The Governor shall certify the slates of presidential electors no later than 5:00 P.M. on the fifteenth day following the date on which such election was conducted. Notwithstanding the deadlines specified in this Code section, such times may be altered for just cause by an order of a judge of superior court of this state.

(c) The Secretary of State shall not count, tabulate, or publish the names of any write-in candidates for whom the notice of intention of

candidacy has not been provided in compliance with Code Section 21-2-133. (Code 1933, § 34-1510, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1987, p. 997, § 3; Ga. L. 1995, p. 1027, § 14; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 269, § 26; Ga. L. 2003, p. 517, § 57; Ga. L. 2012, p. 995, § 39/SB 92.)

**The 2012 amendment**, effective July 1, 2012, substituted “subparagraph (a)(4)(A)” for “subparagraph (A) of para-

graph (4)” in the first sentence of subsection (a) and in the second sentence of subsection (b).

### JUDICIAL DECISIONS

**Certification of election returns.** — Trial court did not err in ruling that certification by a county board of elections and registration triggered the five-day filing period of O.C.G.A. § 21-2-524(a) because the five-day period of § 21-2-524(a) for filing a petition to contest the election results for a county office began to run when the county superintendent had officially consolidated and certified the re-

turns for the particular office; because the Secretary of State only certifies election returns for federal and state offices, the sole election official specified in the Georgia Code as having responsibility for consolidation and certification of election results for other offices is the local superintendent. *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

### **21-2-500. Delivery of voting materials; presentation to grand jury in certain cases; preservation and destruction; destruction of unused ballots.**

**Law reviews.** — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

### **21-2-501. Number of votes required for election.**

(a) Except as otherwise provided in this Code section, no candidate shall be nominated for public office in any primary or special primary or elected to public office in any election or special election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office. In instances where no candidate receives a majority of the votes cast, a run-off primary, special primary runoff, run-off election, or special election runoff between the candidates receiving the two highest numbers of votes shall be held. Unless such date is postponed by a court order, such run-off primary or special primary runoff shall be held on the twenty-first day after the day of holding the preceding primary or special primary, provided that, unless postponed by court order, a runoff in the case of an election or special election shall be held on the twenty-eighth day after the day of holding the preceding election or special election; provided, however, that, in the event that a special election is held at the time of a general primary, any special election runoff shall be held at the time of the general



primary runoff. If any candidate eligible to be in a runoff withdraws, dies, or is found to be ineligible, the remaining candidates receiving the two highest numbers of votes shall be the candidates in the runoff. The candidate receiving the highest number of the votes cast in such run-off primary, special primary runoff, run-off election, or special election runoff to fill the nomination or public office sought shall be declared the winner. The name of a write-in candidate eligible for election in a runoff shall be printed on the election or special election run-off ballot in the independent column. The run-off primary, special primary runoff, run-off election, or special election runoff shall be a continuation of the primary, special primary, election, or special election for the particular office concerned. Only the electors who were duly registered to vote and not subsequently deemed disqualified to vote in the primary, special primary, election, or special election for candidates for that particular office shall be entitled to vote therein, and only those votes cast for the persons designated as candidates in such run-off primary, special primary runoff, run-off election, or special election runoff shall be counted in the tabulation and canvass of the votes cast. No elector shall vote in a run-off primary or special primary runoff in violation of Code Section 21-2-224.

(b) For the purposes of this subsection, the word “plurality” shall mean the receiving by one candidate alone of the highest number of votes cast. If the municipal charter or ordinances of a municipality as now existing or as amended subsequent to September 1, 1968, provide that a candidate may be nominated or elected by a plurality of the votes cast to fill such nomination or public office, such provision shall prevail. Otherwise, no municipal candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office.

(c) In instances in which no municipal candidate receives a majority of the votes cast and the municipal charter or ordinances do not provide for nomination or election by a plurality vote, a run-off primary or election shall be held between the candidates receiving the two highest numbers of votes. Such runoff shall be held on the twenty-eighth day after the day of holding the first primary or election, unless such run-off date is postponed by court order. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any run-off primary or election resulting therefrom; provided, however, that no elector shall vote in a run-off primary in violation of Code Section 21-2-216. The run-off primary or election shall be a continuation of the first primary or election, and only those votes cast for the candidates receiving the two highest numbers of votes in the first primary or election shall be counted. No write-in votes may be cast in such a primary, run-off primary, or run-off election. If any candidate eligible to be in a runoff

withdraws, dies, or is found to be ineligible, the remaining candidates receiving the two highest numbers of votes shall be the candidates in such runoff. The municipal candidate receiving the highest number of the votes cast in such run-off primary or run-off election to fill the nomination or public office sought shall be declared the winner. The municipality shall give written notice to the Secretary of State of such runoff as soon as such municipality certifies the preceding primary, special primary, election, or special election.

(d) The name of a municipal write-in candidate eligible for election in a municipal runoff shall be printed on the municipal run-off election ballot in the independent column.

(e) In all cities having a population in excess of 100,000 according to the United States decennial census of 1980 or any future such census, in order for a municipal candidate to be nominated for public office in any primary or elected to public office in any municipal election, he or she must receive a majority of the votes cast.

(f) Except for presidential electors, to be elected to public office in a general election, a candidate must receive a majority of the votes cast in an election to fill such public office. To be elected to the office of presidential electors, no slate of candidates shall be required to receive a majority of the votes cast, but that slate of candidates shall be elected to such office which receives the highest number of votes cast. (Code 1933, § 34-1513, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1968, p. 257, § 2; Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1971, p. 602, § 3; Ga. L. 1975, p. 867, § 1; Ga. L. 1979, p. 904, § 1; Ga. L. 1981, p. 1718, § 10; Ga. L. 1983, p. 827, § 2; Ga. L. 1986, p. 855, § 7; Ga. L. 1987, p. 417, § 10; Ga. L. 1994, p. 279, § 11; Ga. L. 1994, p. 1443, § 10; Ga. L. 1996, p. 101, § 4; Ga. L. 1996, p. 145, § 20; Ga. L. 1997, p. 590, § 39; Ga. L. 1998, p. 145, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 1998, p. 825, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 17; Ga. L. 2001, p. 240, § 42; Ga. L. 2003, p. 517, § 59; Ga. L. 2005, p. 253, § 63/HB 244; Ga. L. 2008, p. 817, § 7/HB 1098; Ga. L. 2010, p. 914, § 24/HB 540.)

**The 2010 amendment**, effective July 1, 2010, added the proviso at the end of the third sentence in subsection (a).

## RESEARCH REFERENCES

**ALR.** — Construction and Application of Elections Clause of United States Constitution, U.S. Const. Art. I, § 4, cl.1, and state Constitutional provisions concerning congressional elections, 34 ALR6th 643.

**21-2-501.1. Timing whenever a municipal general primary is held in conjunction with the general primary in even-numbered years.**

Repealed by Ga. L. 2012, p. 995, § 40/SB 92, effective July 1, 2012.

**Editor's notes.** — This Code section was based on Code 1981, § 21-2-501.1, enacted by Ga. L. 1998, p. 295, § 1.

**21-2-503. Issuance of commission to person whose election is contested; procedure upon finding that person to whom commission was issued was not legally elected; swearing into office of person whose election is contested.**

(a) A commission which is to be issued, as provided for by this chapter, to any person elected to any office shall be issued notwithstanding the fact that the election of such person to any such office may be contested in the manner provided by this chapter. Whenever it shall appear, by the final judgment of the proper tribunal having jurisdiction of a contested election, that the person to whom such commission shall have been issued has not been elected legally to the office for which he or she has been commissioned, then a commission shall be issued to the person who shall appear to be elected legally to such office. The issuing of such commission shall nullify the commission already issued; and all power and authority first issued under such commission shall thereupon cease.

(b) Upon the certification of the results of the election, a person elected to a municipal office may be sworn into office notwithstanding that the election of such person may be contested in the manner provided by this chapter. Upon the final judgment of the proper tribunal having jurisdiction of a contested election which orders a second election or declares that another person was legally elected to the office, the person sworn into municipal office shall cease to hold the office and shall cease to exercise the powers, duties, and privileges of the office immediately.

(c) Upon the certification of the results of the election, a person elected to a federal, state, or county office may be sworn into office notwithstanding that the election of such person may be contested in the manner provided by this chapter. Upon the final judgment of the proper tribunal having jurisdiction of a contested election which orders a second election or declares that another person was legally elected to the office, the person sworn into such office shall cease to hold the office and shall cease to exercise the powers, duties, and privileges of the office immediately. (Ga. L. 1893, p. 124, § 1; Civil Code 1895, § 107; Ga.



L. 1898, p. 44, § 1; Civil Code 1910, § 121; Code 1933, § 34-2801; Code 1933, § 34-1512, enacted by Ga. L. 1969, p. 292, § 1; Ga. L. 1970, p. 347, § 30; Ga. L. 1993, p. 118, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2011, p. 683, § 20/SB 82.)

**The 2011 amendment**, effective July 1, 2011, substituted “Upon the certification of the results of the election, a” for “A” at the beginning of subsection (b); and added subsection (c).

**21-2-504. Special primary or election upon failure to nominate or elect or upon death, withdrawal, or failure of officer-elect to qualify.**

**Administrative rules and regulations.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, Sec. 183-1-8-.01.

ARTICLE 13

CONTESTED ELECTIONS AND PRIMARIES

**21-2-522. Grounds for contest.**

JUDICIAL DECISIONS

**Petition to contest properly denied.** — Trial court properly denied a losing candidate’s petition to contest the election results of a mayoral election held in a town as the losing candidate failed to meet the burden of establishing that any misconduct, fraud, or irregularity occurred that placed the result of the election in doubt based on the county clerk signing the document reflecting the election results, instead of the election superintendent, and the clerk’s failure to purge the voters list, which was not an obligation of the election supervisor anyway. The omission of the statutory language providing directions on how to cast a vote likewise did not necessitate a new election since the poll manager testified that the

poll manager and other poll workers instructed each voter how to fill out the ballot and established that there was no concern or confusion by the voters regarding the ballot. *Lewis v. O’Day*, 284 Ga. 423, 667 S.E.2d 594 (2008).  
In an election contest because the contestor did not present any evidence showing a factual basis to establish fraud by casting doubt on the counting of a single vote, but instead presented web site information, which had nothing to do with any miscounting of votes or the mishandling of any absentee ballots, such evidence was insufficient to support election contest. *Davis v. Dunn*, 286 Ga. 582, 690 S.E.2d 389 (2010).

**21-2-522.1. Rebuttable presumption of legal vote in contested election.**

**Law reviews.** — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

## JUDICIAL DECISIONS

**Evidence insufficient to show doubt as to validity of election results. —**

Two candidates who lost city council races by 126 and 133 votes failed to produce evidence placing the results of the election in doubt based on a malfunctioning ma-

chine that produced 60 additional votes prior to recertification of the results and 21 absentee ballots alleged to have been improperly counted. *Scoggins v. Collins*, 288 Ga. 26, 701 S.E.2d 134 (2010).

**21-2-524. Filing and allegations of petition to contest primary or election; service of petition; verification; notice of proceedings to answer petition; service of special process; amendment.**

## JUDICIAL DECISIONS

## ANALYSIS

## CONSIDERATION

**Consideration**

**Insufficient evidence of fraud. —** In an election contest because the contestor did not present any evidence showing a factual basis to establish fraud by casting doubt on the counting of a single vote, but instead presented web site information, which had nothing to do with any miscounting of votes or the mishandling of any absentee ballots, such evidence was insufficient to support election contest. *Davis v. Dunn*, 286 Ga. 582, 690 S.E.2d 389 (2010).

**Time for filing contest.**

Trial court did not err in dismissing candidates' petition contesting a general election on the ground that the petition was not filed within five days after the official consolidation of the returns and certification thereof pursuant to O.C.G.A. § 21-2-524(a). When the board certified the election results on November 7, the candidates had through November 12 to file a petition, but, since they did not file the petition until November 17, the trial court was without jurisdiction to decide the merits of the election contest, and the trial court's finding that the date of certification was November 7 was supported by evidence that, on that date, the chairman of the county board of elections signed the certification form on the only signature line provided for the superintendent; although each plaintiff has five

days in which to file a petition challenging an election, O.C.G.A. § 21-2-524(a) clearly permits different filing dates for different races in any given election, depending on when the appropriate party certifies the results for the "particular office" at issue. *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

Trial court did not err in ruling that certification by a county board of elections and registration triggered the five-day filing period of O.C.G.A. § 21-2-524(a) because the five-day period of § 21-2-524(a) for filing a petition to contest the election results for a county office began to run when the county superintendent had officially consolidated and certified the returns for the particular office; because the Secretary of State only certifies election returns for federal and state offices, the sole election official specified in the Georgia Code as having responsibility for consolidation and certification of election results for other offices is the local superintendent. *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

Election Code does not provide that a mandatory recount and re-certification of the results in one race require re-certification of the results in other races and a second opportunity to contest such other elections; the apparent loser of the race that is the subject of the recount

must be given five days after re-certification in which to challenge the election, but the exception to measurement of the five-day period from the date of initial certification does not apply to candidates whose races were not subject to a recount, who have remained the ap-

parent losers since certification of their races, and who have therefore already had a real opportunity to challenge the election within five days after certification of the initial count. *Broughton v. Douglas County Bd. of Elections*, 286 Ga. 528, 690 S.E.2d 141 (2010).

**21-2-526. Trial by jury.**

**JUDICIAL DECISIONS**

**Trial by jury in election contest not required.** — Trial court properly denied two challengers’ petition contesting a city’s general election as the challengers failed to show fraud, misconduct, irregularity or illegality; a new election manager

was not required for each election; a jury trial was not warranted in the matter; and there was no basis shown to set aside the results of the runoff election. *Fuller v. Thomas*, 284 Ga. 397, 667 S.E.2d 587 (2008).

**21-2-527. Pronouncement of judgment; effect of finding of misconduct by poll officers; calling of second primary, election, or runoff by court upon finding of defects.**

**JUDICIAL DECISIONS**

**Cited in** *Fuller v. Thomas*, 284 Ga. 397, 667 S.E.2d 587 (2008).

**ARTICLE 14**

**SPECIAL ELECTIONS AND PRIMARIES GENERALLY;  
MUNICIPAL TERMS OF OFFICE**

**21-2-540. Conduct of special elections generally.**

(a) Every special election shall be held and conducted in all respects in accordance with the provisions of this chapter relating to general elections; and the provisions of this chapter relating to general elections shall apply thereto insofar as practicable and as not inconsistent with any other provisions of this chapter. All special elections held at the time of a general election, as provided by Code Section 21-2-541, shall be conducted by the poll officers by the use of the same equipment and facilities, so far as practicable, as are used for such general election.

(b) At least 29 days shall intervene between the call of a special primary and the holding of same, and at least 29 days shall intervene between the call of a special election and the holding of same. The period during which candidates may qualify to run in a special primary or a special election shall remain open for a minimum of two and one-half days. Special elections which are to be held in conjunction with



the presidential preference primary, a state-wide general primary, or state-wide general election shall be called at least 90 days prior to the date of such presidential preference primary, state-wide general primary, or state-wide general election; provided, however, that this requirement shall not apply to special elections held on the same date as such presidential preference primary, state-wide general primary, or state-wide general election but conducted completely separate and apart from such state-wide general primary or state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork.

(c)(1) Notwithstanding any other provision of law to the contrary, a special primary or special election to fill a vacancy in a county or municipal office shall be held only on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years, any such special election shall only be held on:

- (i) The third Tuesday in March;
- (ii) The third Tuesday in June;
- (iii) The third Tuesday in September; or
- (iv) The Tuesday after the first Monday in November; and

(B) In even-numbered years, any such special election shall only be held on:

(i) The third Tuesday in March; provided, however, that in the event that a special election is to be held under this provision in a year in which a presidential preference primary is to be held, then any such special election shall be held on the date of and in conjunction with the presidential preference primary;

(ii) The date of the general primary; or

(iii) The Tuesday after the first Monday in November.

(2) Notwithstanding any other provision of law to the contrary, a special election to present a question to the voters shall be held only on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years, any such special election shall only be held on the third Tuesday in March or on the Tuesday after the first Monday in November; and

(B) In even-numbered years, any such special election shall only be held on:

(i) The date of and in conjunction with the presidential preference primary if one is held that year;

- (ii) The date of the general primary; or
- (iii) The Tuesday after the first Monday in November.

(3) The provisions of this subsection shall not apply to:

(A) Special elections held pursuant to Chapter 4 of this title, the “Recall Act of 1989,” to recall a public officer or to fill a vacancy in a public office caused by a recall election; and

(B) Special primaries or special elections to fill vacancies in federal or state public offices.

(d) Except as otherwise provided by this chapter, the superintendent of each county or municipality shall publish the call of the special election.

(e) Candidates in special elections for partisan offices shall be listed alphabetically on the ballot and may choose to designate on the ballot their party affiliation. The party affiliation selected by a candidate shall not be changed following the close of qualifying. (Code 1933, §§ 34-806, 34-1314, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 308, § 35; Ga. L. 1969, p. 329, § 8A; Ga. L. 1984, p. 1, § 14; Ga. L. 1984, p. 638, § 3; Ga. L. 1986, p. 382, § 6; Ga. L. 1986, p. 1538, § 3; Ga. L. 1991, p. 316, § 1; Ga. L. 1994, p. 1406, § 27; Ga. L. 1996, p. 145, § 21; Ga. L. 1997, p. 590, § 42; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 240, §§ 43, 44; Ga. L. 2005, p. 253, § 64/HB 244; Ga. L. 2008, p. 131, § 1/HB 296; Ga. L. 2010, p. 914, § 25/HB 540; Ga. L. 2012, p. 995, §§ 41, 42/SB 92.)

**The 2010 amendment**, effective July 1, 2010, substituted “90 days” for “60 days” in the last sentence of subsection (b).

**The 2012 amendment**, effective July 1, 2012, in the second sentence of subsection (b), inserted “the presidential preference primary,” twice inserted “presidential preference primary,” and inserted commas; in subparagraph (c)(1)(B), added “or” to the end of division (c)(1)(B)(ii), deleted former division (c)(1)(B)(iii), which read: “The third Tuesday in September; or,” and redesignated former division

(c)(1)(B)(iv) as present division (c)(1)(B)(iii); and substituted the present provisions of subsection (e) for the former provisions, which read: “Candidates in special elections for partisan offices shall be listed on the ballot according to party affiliation.”

**Administrative rules and regulations.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, Sec. 183-1-8-.01.

## OPINIONS OF THE ATTORNEY GENERAL

**Vacancies in offices of mayor and council members for City of Willacoochee.** — Vacancies in the offices of mayor and council members for the City of Willacoochee should be filled by special

election held on a statutorily authorized date and not by appointment of the remaining members of the city council. 2008 Op. Att’y Gen. No. U2008-3.

**21-2-543. Special election for United States congressional representative vacancy.**

**Administrative rules and regulations.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, Sec. 183-1-8-.01.

**21-2-544. Special election for General Assembly vacancy.**

Whenever a vacancy shall occur or exist in either house of the General Assembly, such vacancy shall be filled as follows:

(1) If such vacancy shall occur during a session of the General Assembly, the Governor shall issue, within ten days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance;

(2) Except as provided in paragraph (4) of this Code section, if such vacancy shall occur after the conclusion of the regular session which is held during the first year of the term of office of members of the General Assembly, but more than 60 days prior to the Tuesday following the first Monday in November of the first year of the term of office of members of the General Assembly, the Governor may issue at any time but no later than 60 days prior to the Tuesday following the first Monday in November of the first year of the term of office of members of the General Assembly a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held not fewer than 30 days after its issuance nor later than 60 days prior to the Tuesday following the first Monday in November of the first year of the term of office of members of the General Assembly;

(3) If such vacancy shall occur after the conclusion of the regular session of the General Assembly held during the first year of the term of office of members of the General Assembly during the period beginning 60 days prior to the Tuesday following the first Monday in November of such year and ending on the day prior to the beginning of the regular session of the General Assembly held during the second year of the term of office of members of the General Assembly, the Governor shall issue, within ten days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance;

(4) If such vacancy shall occur following the election of a member of the General Assembly but prior to such member taking office, such vacancy shall be filled in accordance with Code Section 21-2-504, but



such election shall be called within ten days of such vacancy and shall be held not fewer than 30 nor more than 60 days following the date of such call;

(5) If such vacancy shall occur following the conclusion of the regular session of the General Assembly during the second year of the term of office of members of the General Assembly, the issuance of a writ of election to fill such vacancy shall be in the discretion of the Governor except as otherwise provided in paragraph (6) of this Code section and if the Governor chooses to issue such writ of election to fill such vacancy, such election shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance; or

(6)(A) If such vacancy shall exist at a time when the members of the General Assembly shall be required to meet in special session, the Governor shall issue, within two days after the calling of an extraordinary session of the General Assembly during the existence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance; or

(B) If such vacancy shall occur after the issuance by the Governor of a call for an extraordinary session of the General Assembly, but prior to the conclusion of such extraordinary session, the Governor shall issue, within five days after the occurrence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy which shall be held on the date named in the writ, which shall not be fewer than 30 nor more than 60 days after its issuance.

Upon receiving the writ of election from the Governor, the Secretary of State shall then transmit the writ of election to the superintendent of each county involved and shall publish the call of the election. (Code 1933, § 34-805, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1965, p. 3, § 1; Ga. L. 1970, p. 88, § 1; Ga. L. 1984, p. 638, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2001, p. 230, § 16; Ga. L. 2012, p. 995, § 43/SB 92.)

**The 2012 amendment**, effective July 1, 2012, rewrote this Code section, which read: "Whenever a vacancy shall occur or exist in either house of the General Assembly during a session of the General Assembly or whenever such vacancy shall occur or exist at a time when the members of the General Assembly shall be required to meet, at any time previous to the next November election, the Governor shall is-

sue, within ten days after the occurrence of such vacancy, or after the calling of an extraordinary session of the General Assembly during the existence of such vacancy, a writ of election to the Secretary of State for a special election to fill such vacancy, which election shall be held on the date named in the writ, which shall not be less than 30 nor more than 60 days after its issuance. Upon receiving the writ

of election from the Governor, the Secretary of State shall then transmit the writ of election to the superintendent of each county involved and shall publish the call of the election. In all other cases any such special election to fill any such vacancy shall be held if the Governor issues his or her writ of election therefor. In such cases the writ of election shall be issued to the Secretary of State who shall transmit the

writ of election to the superintendent of each county involved and shall publish the call of the election.”

**Administrative rules and regulations.** — Calls for primaries and elections, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Dates of Primaries and Elections, Sec. 183-1-8-.01.

## ARTICLE 15

### MISCELLANEOUS OFFENSES

#### **21-2-562. Fraudulent entries; unlawful alteration or destruction of entries; unlawful removal of documents; neglect or refusal to deliver documents.**

(a) Any person who willfully:

(1) Inserts or permits to be inserted any fictitious name, false figure, false statement, or other fraudulent entry on or in any registration card, electors list, voter’s certificate, affidavit, tally paper, general or duplicate return sheet, statement, certificate, oath, voucher, account, ballot, or other record or document authorized or required to be made, used, signed, returned, or preserved for any public purpose in connection with any primary or election;

(2) Alters materially or intentionally destroys any entry which has been lawfully made therein; or

(3) Takes or removes any book, affidavit, return, account, ballot, or other document or record from the custody of any person having lawful charge thereof, in order to prevent the same from being used or inspected or copied as required or permitted by this chapter

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both.

(b) Any person who willfully neglects or refuses, within the time and in the manner required by this chapter, to deliver any such document described in subsection (a) of this Code section into the custody of the officers who are required by this chapter to use or keep the same shall be guilty of a misdemeanor. (Ga. L. 1958, p. 269, § 46; Code 1933, § 34-1905, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1977, p. 313, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 4/SB 40; Ga. L. 2010, p. 914, § 26/HB 540.)

The 2010 amendment, effective July 1, 2010, deleted “or ballot card” following “account, ballot” in paragraphs (a)(1) and (a)(3).

**21-2-565. Making of false statements in connection with filing notice of candidacy or qualifying as candidate for party nomination; duties of district attorney as to violations.**

**JUDICIAL DECISIONS**

Cited in *Spillers v. State*, 299 Ga. App. 854, 683 S.E.2d 903 (2009).

**21-2-568. Entry into voting compartment or booth while another voting; interfering with elector; inducing elector to reveal or revealing elector’s vote; influencing voter while assisting.**

(a) Any person who knowingly:

(1) Goes into the voting compartment or voting machine booth while another is voting or marks the ballot or registers the vote for another, except in strict accordance with this chapter;

(2) Interferes with any elector marking his or her ballot or registering his or her vote;

(3) Attempts to induce any elector before depositing his or her ballot to show how he or she marks or has marked his or her ballot; or

(4) Discloses to anyone how another elector voted, without said elector’s consent, except when required to do so in any legal proceeding

shall be guilty of a felony.

(b) Any person who, while giving lawful assistance to another, attempts to influence the vote of the elector he or she is assisting or marks a ballot or registers a vote in any other way than that requested by the voter he or she is assisting shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both. (Code 1933, § 34-1926, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1989, p. 1090, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2007, p. 536, § 7/SB 40; Ga. L. 2008, p. 781, § 18/HB 1112; Ga. L. 2010, p. 914, § 27/HB 540.)



**The 2010 amendment**, effective July 1, 2010, deleted “or ballot card” following “ballot” throughout this Code section.

**21-2-570. Giving or receiving, offering to give or receive, or participating in the giving or receiving of money or gifts for registering as a voter, voting, or voting for a particular candidate.**

**Administrative rules and regulations.** — Interpretation of prohibited activity, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Penalties, Sec. 183-1-19-.01.

**21-2-573. Absentee voting by unqualified elector.**

**JUDICIAL DECISIONS**

**Construction.** — O.C.G.A. § 21-2-573 has never defined who is eligible to vote because the phrase “is not qualified to vote” encompasses persons who do not meet the qualifications to vote at all in the relevant election, O.C.G.A. § 21-2-216 (setting forth qualifications of electors), apart from whether the electors meet whatever qualifications might have existed for voting by absentee ballot; the General Assembly clarified that any elector can seek to vote by absentee ballot without having a reason, yet the legislature did not amend § 21-2-573, indicating that electors can still violate § 21-2-573 if the electors are not qualified to vote at all. *Spalding County Bd. of Elections v. McCord*, 287 Ga. 835, 700 S.E.2d 558 (2010).

**21-2-574. Unlawful possession of ballots.**

Any person, other than an officer charged by law with the care of ballots or a person entrusted by any such officer with the care of the same for a purpose required by law, who has in his or her possession outside the polling place any official ballot shall be guilty of a felony. (Ga. L. 1949, p. 1291, § 2A; Code 1933, § 34-1912, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 28/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “or ballot cards” following “ballots” and “or ballot card” following “ballot” in this Code section.

**21-2-575. Counterfeit ballots or ballot labels; sample or facsimile ballots.**

(a) Any person who makes, constructs, or has in his or her possession any counterfeit of an official ballot or ballot label shall be guilty of a felony.

(b) This Code section shall not be applied to facsimile ballots printed and published as an aid to electors in any newspaper generally and

regularly circulated within this state, so long as such facsimile ballot is at least 25 percent larger or smaller than the official ballot of which it is a facsimile. This Code section shall not be applied to any sample or facsimile ballots or ballot labels obtained under Code Section 21-2-400. Nothing in this Code section shall be so construed as to prohibit the procurement and distribution of reprints of the said newspaper printings; nor shall it be so construed as to prohibit the preparation and distribution by election officials of facsimile ballots and ballot labels or portions thereof, provided that they are of a different color and at least 25 percent larger or smaller than the official ballots or ballot labels.

(c) Nothing in this Code section shall be so construed as to prohibit any person from procuring and distributing reprints or portions of reprints of any sample or facsimile ballots or ballot labels as provided in Code Section 21-2-400, provided such reprints or portions of reprints are of a different color and at least 25 percent larger or smaller than the official ballots or ballot labels. (Ga. L. 1949, p. 1291, § 2A; Code 1933, § 34-1913, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1969, p. 329, § 25; Ga. L. 1980, p. 1256, § 8; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 29/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “, ballot card,” following “ballot” in subsection (a).

### **21-2-576. Destroying, defacing, or delaying delivery of ballots.**

Any person who willfully destroys or defaces any ballot or willfully delays the delivery of any ballots shall be guilty of a misdemeanor. (Code 1933, § 34-1914, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 30/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “or ballot card” following “ballot” and “or ballot cards” following “ballots” in this Code section.

### **21-2-578. Unfolding, opening, or prying into ballots.**

Any person who, before any ballot is deposited in the ballot box as provided by this chapter, willfully unfolds, opens, or pries into any such ballot with the intent to discover the manner in which the same has been marked shall be guilty of a misdemeanor. (Code 1933, § 34-1923, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 31/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “or ballot card” following “ballot” twice in this Code section.

**21-2-579. Fraudulently allowing ballot or voting machine to be seen; casting unofficial ballot; receiving unauthorized assistance in voting.**

Any voter at any primary or election who:

(1) Allows his or her ballot or the face of the voting machine used by him or her to be seen by any person with the apparent intention of letting it be known for a fraudulent purpose how he or she is about to vote;

(2) Casts or attempts to cast any other than the official ballot which has been given to him or her by the proper poll officer, or advises or procures another to do so;

(3) Without having made the affirmation under oath or declaration required by Code Section 21-2-409, or when the disability which he or she declared at the time of registration no longer exists, permits another to accompany him or her into the voting compartment or voting machine booth or to mark his or her ballot or to register his or her vote on the voting machine or direct recording electronic (DRE) equipment; or

(4) States falsely to any poll officer that because of his or her inability to read the English language or because of blindness, near-blindness, or other physical disability he or she cannot mark the ballot or operate the voting machine without assistance

shall be guilty of a misdemeanor. (Code 1933, § 34-1925, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1989, p. 911, § 2; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 62; Ga. L. 2010, p. 914, § 32/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “, ballot card,” following “ballot” in paragraph (1); and deleted “or ballot card” following “ballot” in paragraphs (2) and (4).

**21-2-587. Frauds by poll officers.**

Any poll officer who willfully:

(1) Makes a false return of the votes cast at any primary or election;

(2) Deposits fraudulent ballots in the ballot box or certifies as correct a false return of ballots;

(3) Registers fraudulent votes upon any voting machine or certifies as correct a return of fraudulent votes cast upon any voting machine;

(4) Makes any false entries in the electors list;

(5) Destroys or alters any ballot, voter's certificate, or electors list;



(6) Tampers with any voting machine, direct recording electronic (DRE) equipment, or tabulating computer or device;

(7) Prepares or files any false voter's certificate not prepared by or for an elector actually voting at such primary or election; or

(8) Fails to return to the officials prescribed by this chapter, following any primary or election, any keys of a voting machine, ballot box, general or duplicate return sheet, tally paper, oaths of poll officers, affidavits of electors and others, record of assisted voters, numbered list of voters, electors list, voter's certificate, spoiled and canceled ballots, ballots deposited, written, or affixed in or upon a voting machine, DRE memory cards, or any certificate or any other paper or record required to be returned under this chapter

shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both. (Orig. Code 1863, § 1238; Code 1868, § 1319; Code 1873, § 1292; Code 1882, § 1292; Civil Code 1895, § 74; Civil Code 1910, § 84; Code 1933, § 34-1501; Code 1933, § 34-1921, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1985, p. 206, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2003, p. 517, § 65; Ga. L. 2007, p. 536, § 11/SB 40; Ga. L. 2010, p. 914, § 33/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted "or ballot cards" following "ballots" twice each in paragraphs (2) and (8); and deleted "ballot card," following "ballot," in paragraph (5)

**Administrative rules and regulations.** — Spoiled ballot definition, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Election Code, Absentee Voting, Sec. 183-1-14-.07.

## **21-2-588. Premature counting of votes by poll officer.**

Except as provided in Code Section 21-2-386, any poll officer who counts any votes before the close of the polls or before the last person has voted, whichever occurs later in time, on the day of any primary or election shall be guilty of a misdemeanor. (Code 1933, § 34-1939, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 34/HB 540.)

**The 2010 amendment**, effective July 1, 2010, substituted "Except as provided in Code Section 21-2-386, any" for "Any" at the beginning of this Code section.

## **21-2-594. Offenses by printers of ballots.**

Any printer employed to print any official ballots for use in a primary or election, or any person engaged in printing the same, who:

(1) Appropriates to himself or herself or gives or delivers, or knowingly permits to be taken, any of said ballots by any unauthorized person; or

(2) Willfully and knowingly prints, or causes to be printed, any official ballot in any form other than that prescribed by the appropriate officials or with any other names or printing, or with the names spelled otherwise than as directed by such officials or the names or printing thereon arranged in any other way than that authorized and directed by this chapter

shall be guilty of a felony. (Ga. L. 1922, p. 97, § 6; Code 1933, §§ 34-1907, 34-9917; Code 1933, § 34-1911, enacted by Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1983, p. 140, § 1; Ga. L. 1998, p. 295, § 1; Ga. L. 2010, p. 914, § 35/HB 540.)

**The 2010 amendment**, effective July 1, 2010, deleted “or ballot cards” following “ballots” throughout this Code section.

#### **21-2-604. Criminal solicitation to commit election fraud; penalties.**

(a)(1) A person commits the offense of criminal solicitation to commit election fraud in the first degree when, with intent that another person engage in conduct constituting a felony under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.

(2) A person commits the offense of criminal solicitation to commit election fraud in the second degree when, with intent that another person engage in conduct constituting a misdemeanor under this article, he or she solicits, requests, commands, importunes, or otherwise attempts to cause the other person to engage in such conduct.

(b)(1) A person convicted of the offense of criminal solicitation to commit election fraud in the first degree shall be punished by imprisonment for not less than one nor more than three years.

(2) A person convicted of the offense of criminal solicitation to commit election fraud in the second degree shall be punished as for a misdemeanor.

(c) It is no defense to a prosecution for criminal solicitation to commit election fraud that the person solicited could not be guilty of the crime solicited.

(d) The provisions of subsections (a) through (c) of this Code section are cumulative and shall not supersede any other penal law of this state. (Code 1981, § 21-2-604, enacted by Ga. L. 2011, p. 683, § 21/SB 82.)

**Effective date.** — This Code section became effective July 1, 2011.

CHAPTER 4

RECALL OF PUBLIC OFFICERS

**21-4-4. Officers subject to recall; number of electors needed to demand recall; limitation on number of public officials who may be subjects of a particular recall petition; grounds for recall.**

RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state statutes regulating or proscribing payment in connection with gathering signatures on nominating petitions for public office or initiative petitions, 40 ALR6th 317.

CHAPTER 5

ETHICS IN GOVERNMENT

Article 1

General Provisions

- Sec. 21-5-3. Definitions.
- 21-5-4. Georgia Government Transparency and Campaign Finance Commission; membership; officers; quorum; meetings.
- 21-5-5. Operating expenses.
- 21-5-6. Powers and duties of the commission.
- 21-5-7.1. Technical defects in filings; determination; notice to the subject of the complaint and opportunity to correct the defect; administrative fee; dismissal of complaints where best efforts have been made to complete a filing.
- 21-5-11. Acceptance by public officers of monetary fees or honoraria.
- 21-5-13. Limitation of actions.

Sec.

- 21-5-14. E-mail address reporting requirements; exceptions.
- 21-5-15. Notice to local officials regarding certain actions to be given by certified mail or statutory overnight delivery.

Article 2

Campaign Contributions

- 21-5-30. Contributions made to candidate or campaign committee or for recall of a public officer.
- 21-5-30.1. Contributions by regulated entities to elected executive officers or candidates.
- 21-5-30.2. Contributions by public agencies.
- 21-5-34. Disclosure reports.
- 21-5-34.1. Filing campaign contribution disclosure reports electronically.
- 21-5-36. Disposition of reports; handling of complaints and violations.



Article 2A

Contributions to Candidates for Public Office

- Sec.  
21-5-40. Definitions.  
21-5-41. Maximum allowable contributions.

Article 3

Financial Disclosure Statements

- 21-5-50. Filing by public officers; filing by candidates for public office; filing by elected officials and members of the General Assembly; electronic filing; transfer of filings from the Secretary of State to the commission.  
21-5-51. Inspection and copying of financial disclosure statements.

Sec.

- 21-5-52. Filing by mail [Repealed].  
21-5-53. Public record [Repealed].

Article 4

Public Officials' Conduct and Lobbyist Disclosure

- 21-5-70. Definitions.  
21-5-71. Registration required; application for registration; supplemental registration; expiration; docket; fees; identification cards; public rosters; exemptions.  
21-5-73. Disclosure reports.  
21-5-76. Contingent fees for lobbying prohibited; unauthorized persons on the floor while the General Assembly is in session.

ARTICLE 1

GENERAL PROVISIONS

21-5-3. Definitions.

As used in this chapter, the term:

- (1) "Business entity" means any corporation, sole proprietorship, partnership, limited partnership, limited liability company, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.
- (2) "Campaign committee" means the candidate, person, or committee which accepts contributions or makes expenditures designed to bring about the nomination or election of an individual to any elected office. The term "campaign committee" also means any person or committee which accepts contributions or makes expenditures designed to bring about the recall of a public officer holding elective office or to oppose the recall of a public officer holding elective office or any person or any committee which accepts contributions or makes expenditures designed to bring about the approval or rejection by the voters of any proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state.
- (3) "Campaign contribution disclosure report" means a report filed with the commission by a candidate or the chairperson or treasurer of a campaign committee setting forth all expenditures of more than

\$100.00 and all contributions of more than \$100.00, including contributions and expenditures of lesser amounts when the aggregate amount thereof by or to a person is more than \$100.00 for the calendar year in which the report is filed. Such report shall also include the total amount of all individual contributions received or expenditures made of less than \$100.00 each. The first report required in the calendar year of the election shall contain all such expenditures made and all such contributions received by the candidate or the committee in prior years in support of the campaign in question.

(4) "Candidate" means an individual who seeks nomination for election or election to any public office, whether or not such an individual is elected; and a person shall be deemed to seek nomination or election if such person has taken necessary action under the laws of this state to qualify such person for nomination for election or election or has received any contributions or made any expenditures in pursuit of such nomination or election or has given such person's consent for such person's campaign committee to receive contributions or make expenditures with a view to bringing about such person's nomination for election or election to such office.

(5) "Commission" means the Georgia Government Transparency and Campaign Finance Commission created under Code Section 21-5-4.

(6) "Connected organization" means any organization, including any business entity, labor organization, membership organization, or cooperative, which is not a political action committee as defined in this Code section, but which, directly or indirectly, establishes or administers a political action committee or which provides more than 40 percent of the funds of the political action committee for a calendar year.

(7) "Contribution" means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably

construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office. The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate.

(8) "Direct ownership interest" means the holding or possession of good legal or rightful title of property or the holding or enjoyment of real or beneficial use of the property by any person and includes any interest owned or held by a spouse of such person if such interest is held jointly or as tenants in common between the person and spouse.

(9) "Election" means a primary election; run-off election, either primary or general; special election; or general election. The term "election" also means a recall election.

(10) "Election cycle" means the period from the day following the date of an election or appointment of a person to elective public office through and including the date of the next such election of a person to the same public office and shall be construed and applied separately for each elective office.

(11) "Election year" shall be construed and applied separately for each elective office and means for each elective office the calendar year during which a regular or special election to fill such office is held.

(12) "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or any transfer of money or anything of value made for the purpose of influencing the nomination for election or election of any person, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "expenditure" shall also include the payment of a qualifying fee for and on behalf of a candidate.

(13) "Fiduciary position" means any position imposing a duty to act primarily for the benefit of another person as an officer, director, manager, partner, guardian, or other designation of general responsibility of a business entity.

(14) "Gift" means any gratuitous transfer to a public officer or any member of the family of the public officer or a loan of property or services which is not a contribution as defined in paragraph (7) of this Code section and which is more than \$100.00.



(15) "Independent committee" means any committee, club, association, partnership, corporation, labor union, or other group of persons, other than a campaign committee, political party, or political action committee, which receives donations during a calendar year from persons who are members or supporters of the committee and which expends such funds either for the purpose of affecting the outcome of an election for any elected office or to advocate the election or defeat of any particular candidate.

(16) "Intangible property" means property which is not real property and which is held for profit and includes stocks, bonds, interest in partnerships, choses in action, and other investments but shall not include any ownership interest in any public or private retirement or pension fund, account, or system and shall not include any ownership interest in any public or private life insurance contract or any benefit, value, or proceeds of such life insurance contract.

(16.1) "Investment" means the investment of money or capital to gain interest or income.

(17) "Member of the family" means a spouse and all dependent children.

(17.1) "Nonelection year" shall be construed and applied separately for each elective office and means for each elective office any calendar year during which there is no regular or special election to fill such office.

(17.2) "Nonprofit organization" means a corporation, foundation, or other legal entity, no part of the net earnings of which inures to the benefit of any private shareholder or individual holding an interest in such entity.

(18) "Ordinary and necessary expenses" shall include, but shall not be limited to, expenditures made during the reporting period for office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41, contributions to nonprofit organizations, and flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, and all other expenditures contemplated in Code Section 21-5-33.

(19) "Person" means an individual, partnership, committee, association, corporation, limited liability company, limited liability partnership, trust, professional corporation, or other business entity recognized in the State of Georgia, labor organization, or any other organization or group of persons.

(20) “Political action committee” means:

(A) Any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations during a calendar year from persons who are members or supporters of the committee and which contributes funds to one or more candidates for public office or campaign committees of candidates for public office; and

(B) A “separate segregated fund” as defined in Code Section 21-5-40.

Such term does not include a candidate campaign committee.

(21) “Public employee” means every person employed by the executive, legislative, or judicial branch of state government, or any department, board, bureau, agency, commission, or authority thereof.

(22) “Public officer” means:

(A) Every constitutional officer;

(B) Every elected state official;

(C) The executive head of every state department or agency, whether elected or appointed;

(D) Each member of the General Assembly;

(E) The executive director of each state board, commission, or authority and the members thereof;

(F) Every elected county official and every elected member of a local board of education; and

(G) Every elected municipal official.

(23) “Qualifying officer” means a person who qualifies a candidate for an election.

(24) “Reporting period” means the period of time beginning the day after the last report due date, excluding any grace period, through the due date of the next report. (Code 1981, § 21-5-3, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 2; Ga. L. 1987, p. 458, § 1; Ga. L. 1990, p. 922, § 1; Ga. L. 1992, p. 1075, § 2; Ga. L. 1993, p. 118, § 1; Ga. L. 1993, p. 1279, § 14; Ga. L. 2000, p. 1491, §§ 1, 2; Ga. L. 2005, p. 859, § 2/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 1173, § 2/SB 17.)

**The 2010 amendment**, effective January 10, 2011, inserted “for” near the end of paragraph (1); in paragraph (3), substituted “more than \$100.00” for “\$101.00 or” in three places, substituted “commission”

for “appropriate filing officer” in the first sentence, and “\$100.00” for “\$101.00” in the second sentence; substituted “Georgia Government Transparency and Campaign Finance Commission” for “State Ethics

Commission” in paragraph (5); deleted a comma following the first occurrence of “action committee” in paragraph (6); added paragraph (11); redesignated former paragraph (11) as present paragraph (12), and, in paragraph (12), substituted “on behalf” for “in behalf” in the last sentence; redesignated former paragraph (12) as present paragraph (13); deleted former paragraph (13), which read: “‘Filing officer’ means that official or commission that is designated in Code Section 21-5-34 to receive campaign contribution disclosure reports.”; substituted “which is more than \$100.00” for “which is in the amount of \$101.00 or more” at the end of paragraph (14); added paragraphs (16.1),

(17.1) and (17.2); inserted “repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41,” in paragraph (18); and added paragraphs (23) and (24). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

#### **21-5-4. Georgia Government Transparency and Campaign Finance Commission; membership; officers; quorum; meetings.**

(a) The Georgia Government Transparency and Campaign Finance Commission shall be a successor to the State Ethics Commission, with such duties and powers as are set forth in this chapter. As the successor commission, it shall have all the powers and duties granted to the State Ethics Commission in all matters pending before the State Ethics Commission and may continue to investigate, prosecute, and act upon all such matters.

(b) The commission shall be governed by five members appointed as follows: three members, not more than two of whom shall be from the same political party, shall be appointed by the Governor, two for terms of three years and one for a term of two years; one member shall be appointed by the Senate Committee on Assignments for a term of four years; and one member shall be appointed by the Speaker of the House of Representatives for a term of four years. Upon the expiration of a member’s term of office, a new member, appointed in the same manner as the member whose term of office expired as provided in this subsection, shall become a member of the commission and shall serve for a term of four years and until such member’s successor is duly appointed and qualified. If a vacancy occurs in the membership of the commission, a new member shall be appointed to the unexpired term of office by the state official or the committee that appointed the vacating member. Members of the commission shall not serve for more than one complete term of office.

(c) All members of the commission shall be residents of this state.

(d) Any person who:



(1) Has qualified to run for any federal, state, or local public office within a period of five years prior to such person's appointment;

(2) Has held any federal, state, or local public office within a period of five years prior to such person's appointment; or

(3) Serves as an officer of any political party, whether such office is elective or appointive and whether such office exists on a local, state, or national level

shall be ineligible to serve as a member of the commission.

(e) The commission shall elect a chairperson, a vice chairperson, and other officers as it deems necessary. The members shall not be compensated for their services but they shall be reimbursed in an amount equal to the per diem received by the General Assembly for each day or portion thereof spent in serving as members of the commission. They shall be paid their necessary traveling expenses while engaged in the business of the commission.

(f) A majority of the members of the commission constitutes a quorum for the transaction of business. The vote of at least a majority of the members present at any meeting at which a quorum is present is necessary for any action to be taken by the commission. No vacancy in the membership of the commission impairs the right of a quorum to exercise all rights and perform all duties of the commission.

(g) Meetings of the members of the commission shall be held at the call of the chairperson or whenever any two members so request. (Code 1981, § 21-5-4, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 3; Ga. L. 2005, p. 859, § 3/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 1173, § 3/SB 17.)

**The 2010 amendment**, effective January 10, 2011, substituted the present provisions of subsection (a) for the former provisions, which read: "Those members serving on the State Campaign and Financial Disclosure Commission prior to March 1, 1987, shall serve for a term of office which expires March 1, 1987."; and, in subsection (b), deleted the former first sentence, which read: "There is created the State Ethics Commission, with such duties and powers as are set forth in this chapter.", deleted the former second sentence, which read: "The commission shall be a successor to the State Campaign and Financial Disclosure Commission in all matters pending before the State Campaign and Financial Disclosure Commission on March 1, 1987, and may continue

to investigate, prosecute, and act upon all such matters.", deleted the former fourth sentence, which read: "The initial members shall take office on March 2, 1987." and deleted the proviso at the end of the last sentence. See the editor's note for applicability.

**Editor's notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

## OPINIONS OF THE ATTORNEY GENERAL

**Terms.** — Members of the Georgia Government Transparency and Campaign Finance Commission may serve no more than one complete four year term of office, as set by law, and may for a period of less

than a complete term hold over in office until his successor is duly appointed and properly takes office. 2011 Op. Att’y Gen. No. 11-4.

### 21-5-5. Operating expenses.

The funds necessary to carry out this chapter shall come from the funds appropriated to and available to the commission and from any other available funds. The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the “Budget Act”; provided, however, that the commission shall be assigned for administrative purposes only to the Secretary of State. (Code 1981, § 21-5-5, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 2005, p. 859, § 4/HB 48; Ga. L. 2010, p. 1173, § 4/SB 17.)

**The 2010 amendment**, effective January 10, 2011, substituted “commission” for “State Ethics Commission” in the first sentence. See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and

may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

### 21-5-6. Powers and duties of the commission.

(a) The commission is vested with the following powers:

(1) To meet at such times and places as it may deem necessary;

(2) To contract with other agencies, public or private, or persons as it deems necessary for the rendering and affording of such services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities;

(3) To cooperate with and secure the cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this chapter;

(4) To employ an executive secretary and such additional staff as the commission deems necessary to carry out the powers delegated to the commission by this chapter;

(5) To issue subpoenas to compel any person to appear, give sworn testimony, or produce documentary or other evidence;

(6) To institute and prosecute actions in the superior courts, in its own name, seeking to enjoin or restrain any violation or threatened violation of this chapter;

(7) To adopt in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” such rules and regulations as are specifically authorized in this chapter; and

(8) To do any and all things necessary or convenient to enable it to perform wholly and adequately its duties and to exercise the powers specifically authorized to it in this chapter.

(b) The commission shall have the following duties:

(1) To prescribe forms to be used in complying with this chapter;

(2) To prepare and publish in print or electronically a manual setting forth recommended uniform methods of accounting and reporting for use by persons required by this chapter to file statements and reports;

(3) To accept and file any information voluntarily supplied that exceeds the requirements of this chapter;

(4) To develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(5) To adopt a retention standard for records of the commission in accordance with Article 5 of Chapter 18 of Title 50, the “Georgia Records Act”;

(6) To prepare and publish in print or electronically such other reports and technical studies as in its judgment will tend to promote the purposes of this chapter;

(7) To provide for public dissemination of such summaries and reports;

(8) To determine whether the required statements and reports have been filed and, if so, whether they conform to the requirements of this chapter;

(9) To make investigations, subject to the limitations contained in Code Section 21-5-7.1, with respect to the statements and reports filed under this chapter and with respect to alleged failure to file any statements or reports required under this chapter and upon receipt of the written complaint of any person, verified under oath to the best information, knowledge, and belief by the person making such complaint with respect to an alleged violation of any provision of this chapter, provided that nothing in this Code section shall be construed to limit or encumber the right of the commission to initiate on



probable cause an investigation on its own cognizance as it deems necessary to fulfill its obligations under this chapter;

(10)(A) To conduct a preliminary investigation, subject to the limitations contained in Code Section 21-5-7.1, of the merits of a written complaint by any person who believes that a violation of this chapter has occurred, verified under oath to the best information, knowledge, and belief by the person making such complaint. If there are found no reasonable grounds to believe that a violation has occurred, the complaint shall be dismissed, subject to being reopened upon discovery of additional evidence or relevant material. If the commission determines that there are such reasonable grounds to believe that a violation has occurred, it shall give notice by summoning the persons believed to have committed the violation to a hearing. The hearing shall be conducted in all respects in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commission may file a complaint charging violations of this chapter, and any person aggrieved by the final decision of the commission is entitled to judicial review in accordance with Chapter 13 of Title 50; provided, however, that nothing in this Code section shall be construed to limit or encumber the right of the commission to initiate on probable cause an investigation on its own cognizance as it deems necessary to fulfill its obligations under this chapter.

(B) In any such preliminary investigation referenced in subparagraph (A) of this paragraph, until such time as the commission determines that there are reasonable grounds to believe that a violation has occurred, it shall not be necessary to give the notice by summons nor to conduct a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(11) To report suspected violations of law to the appropriate law enforcement authority;

(12) To investigate upon a written complaint any illegal use of public employees in a political campaign by any candidate;

(13) To issue, upon written request, and publish in print or electronically written advisory opinions on the requirements of this chapter, based on a real or hypothetical set of circumstances; and each such written advisory opinion shall be issued within 60 days of the written request for the advisory opinion. The commission shall make all advisory opinions that were issued after January 9, 2006, publicly available for review and shall post these and all future opinions on the commission's website, and the commission shall make all advisory opinions that were issued prior to January 9, 2006, publicly available for review and shall post these opinions on the

commission's website. No liability shall be imposed under this chapter for any act or omission made in conformity with a written advisory opinion issued by the commission that is valid at the time of the act or omission;

(14) To issue orders, after the completion of appropriate proceedings, directing compliance with this chapter or prohibiting the actual or threatened commission of any conduct constituting a violation. Such order may include a provision requiring the violator:

(A) To cease and desist from committing further violations;

(B) To make public complete statements, in corrected form, containing the information required by this chapter;

(C)(i) Except as provided in paragraph (2) of Code Section 21-5-7.1, to pay a civil penalty not to exceed \$1,000.00 for each violation contained in any report required by this chapter or for each failure to comply with any other provision of this chapter or of any rule or regulation promulgated under this chapter; provided, however, that a civil penalty not to exceed \$10,000.00 may be imposed for a second occurrence of a violation of the same provision and a civil penalty not to exceed \$25,000.00 may be imposed for each third or subsequent occurrence of a violation of the same provision. In imposing a penalty or late filing fee under this chapter, the commission may waive or suspend such penalty or fee if the imposition of such penalty or fee would impose an undue hardship on the person required to pay such penalty or fee. The commission may also waive or suspend a penalty or fee in the case of failure to file or late filing of a report if there are no items to be included in the report. For the purposes of the penalties imposed by this division, the same error, act, omission, or inaccurate entry shall be considered a single violation if the error, act, omission, or inaccurate entry appears multiple times on the same report or causes further errors, omissions, or inaccurate entries in that report or in any future reports or further violations in that report or in any future reports.

(ii) A civil penalty shall not be assessed except after notice and hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The amount of any civil penalty finally assessed shall be recoverable by a civil action brought in the name of the commission. All moneys recovered pursuant to this Code section shall be deposited in the state treasury.

(iii) The Attorney General of this state shall, upon complaint by the commission, or may, upon the Attorney General's own initiative if after examination of the complaint and evidence the Attorney General believes a violation has occurred, bring an

action in the superior court in the name of the commission for a temporary restraining order or other injunctive relief or for civil penalties for a violation of any provision of this chapter or any rule or regulation duly issued by the commission.

(iv) Any action brought by the Attorney General to enforce civil penalties for a violation of the provisions of this chapter or of any rule or regulation duly issued by the commission or any order issued by the commission ordering compliance or to cease and desist from further violations shall be brought in the superior court of the county of the residence of the party against whom relief is sought. Service of process shall lie in any jurisdiction within the state. In such actions, the superior court inquiry shall be limited to whether notice was given by the commission to the violator in compliance with the Constitution and the rules of procedure of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Upon satisfaction that notice was given and a hearing was held pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the superior court shall enforce the orders of the commission and the civil penalties assessed under this chapter and the superior court shall not make independent inquiry as to whether the violations have occurred.

(v) In any action brought by the Attorney General to enforce any of the provisions of this chapter or of any rule or regulation issued by the commission, the judgment, if in favor of the commission, shall provide that the defendant pay to the commission the costs, including reasonable attorneys' fees, incurred by the commission in the prosecution of such action.

The commission shall make all such orders that were issued after January 9, 2006, publicly available for review and shall post these and all future orders on the commission's website, and the commission shall make all advisory orders that were issued prior to January 9, 2006, publicly available for review and shall post these orders on the commission's website. Such orders shall serve as precedent for all future orders and opinions of the commission;

(15) To make public its conclusion that a violation has occurred and the nature of such violation;

(16) To petition the superior court within the county where the hearing was or is being conducted for the enforcement of any order issued in connection with such hearing;

(17) To report to the General Assembly and the Governor at the close of each fiscal year concerning the action taken during that time, the names, salaries, and duties of all individuals employed, and the



funds disbursed and to make such further report on the matters within its jurisdiction as may appear desirable;

(18) To carry out the procedures, duties, and obligations relative to the commission set forth in this chapter;

(19) On a quarterly basis, to prepare, update, and publish in print or electronically a report and post such report on its website, listing the name of each filer who has not filed the most recent campaign contribution disclosure report required by Code Sections 21-5-34 and 21-5-34.1, the financial disclosure statement required by Code Section 21-5-50, or the disclosure report required by Code Section 21-5-73 within 30 days of the date such report was due to be filed;

(20) To publish in print or electronically overall lobbyist spending by category. Such categories shall include gifts, meals, entertainment, office supplies, lodging, equipment, advertising, travel, and postage;

(21) To promulgate rules and regulations with respect to electronic filings;

(22) To provide and conduct semiannual training on the mechanics of electronic filing and registration;

(23) To award attorneys' fees to the party complained against if the commission deems the complaint to be frivolous, legally or factually, or if the complaining party fails, without good cause, to appear at the preliminary hearing on the complaint; and

(24) To issue a warning letter to persons who have not filed any statement or report required by this chapter. (Code 1981, § 21-5-6, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, §§ 4, 5; Ga. L. 1992, p. 56, § 1; Ga. L. 2005, p. 859, § 5/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2009, p. 620, § 1/SB 168; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 1173, § 5/SB 17; Ga. L. 2011, p. 19, § 1/HB 232; Ga. L. 2011, p. 590, § 1/HB 143.)

**The 2009 amendment**, effective May 4, 2009, substituted "specifically authorized in" for "necessary to carry out the purposes of" near the end of paragraph (a)(7); and substituted "specifically authorized to it in this chapter." for "granted to it." at the end of paragraph (a)(8).

**The 2010 amendments.** — The first 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in paragraphs (b)(2), (b)(6), (b)(13), (b)(19), and (b)(20). The second 2010 amendment, effective January 10, 2011, added a comma following "website" in paragraphs

(b)(13) and (b)(14); in paragraph (b)(14), substituted "violation. Such order" for "violation, which order" near the end of the introductory language, in division (b)(14)(C)(i), substituted "\$10,000.00" for "\$5,000.00" and "\$25,000.00" for "\$10,000.00", respectively, in the first sentence, and added the second sentence, and substituted "inquiry shall be" for "inquiry will be" in the third sentence of division (b)(14)(C)(iv); deleted "and" at the end of paragraph (b)(21); substituted a semicolon for a period at the end of paragraph (b)(22); and added paragraphs (b)(23) and

(b)(24). See the editor's note for applicability.

**The 2011 amendments.** — The first 2011 amendment, effective March 15, 2011, added the third sentence in division (b)(14)(C)(i). The second 2011 amendment, effective May 12, 2011, part of an Act to revise, modernize, and correct this title, revised punctuation near the end of subparagraph (b)(10)(B).

**Editor's notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

**21-5-7.1. Technical defects in filings; determination; notice to the subject of the complaint and opportunity to correct the defect; administrative fee; dismissal of complaints where best efforts have been made to complete a filing.**

The commission shall adopt rules which shall provide that:

(1) Upon the commission's receipt of a complaint, a determination shall be made as to whether the complaint relates to a technical defect in a filing. For this purpose, a technical defect shall include, but not be limited to, a defect such as an incorrect date or a failure to include a date, an incorrect contributor's occupation or a failure to include a contributor's occupation, an incorrect address or e-mail address or a failure to include an address or e-mail address, an incorrect employer or a failure to include an employer, accounting errors, or any other similar defects;

(2) When the commission determines that a complaint relates to a technical defect in a filing, the subject of the complaint shall be issued a notice of the technical defect by certified mail, return receipt requested, or statutory overnight delivery and shall be given a period of 30 calendar days from the receipt of the notice to correct the technical defect. During the 30 day period the complaint shall be considered as received by the commission but not yet filed with the commission and shall not be considered a violation of this chapter. If during the 30 day period the technical defect is cured by an amended filing or otherwise, or if during the 30 day period the subject of the complaint demonstrates that there is no technical defect as alleged, the complaint shall be disposed of without filing or further proceedings and no penalty shall be imposed. If the subject of the complaint fails to respond to the notice of a technical defect, make an amended filing, or demonstrate that there is no technical defect as alleged by

the thirty-first day, the commission shall impose and collect an administrative fee not to exceed \$50.00 per technical defect. For the purposes of the penalties imposed by this paragraph, the same error or inaccurate entry shall be considered a single technical violation if the error or inaccurate entry appears multiple times on a single report or causes further errors or inaccurate entries in that report or in any future reports;

(3) If the subject of the complaint does not pay the administrative fee required by paragraph (2) of this Code section, if any, and does not otherwise also comply with paragraph (2) of this Code section by the sixtieth day from the receipt of the notice of a technical defect, the commission shall conduct further investigation and the complaint may proceed further in accordance with the provisions of this chapter; and

(4) When the commission determines in its discretion that best efforts have been made to complete a required filing, said filing shall be considered in compliance with this Code section and any complaint relative to said filing shall be dismissed. (Code 1981, § 21-5-7.1, enacted by Ga. L. 2005, p. 859, § 7/HB 48; Ga. L. 2010, p. 1173, § 6/SB 17.)

**The 2010 amendment,** in the second sentence of paragraph (1), inserted “an incorrect date or”, substituted “, an incorrect contributor’s occupation or” for “or an incorrect date,”, substituted “, an incorrect address or e-mail address or” for “or an incorrect occupation,”, substituted “e-mail address, an incorrect employer or” for “an incorrect address,”, and deleted “or an incorrect employer” following “employer” near the end. See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

## 21-5-9. Penalties.

**Law reviews.** — For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

## 21-5-11. Acceptance by public officers of monetary fees or honoraria.

(a) No public officer other than a public officer elected state wide shall accept a monetary fee or honorarium in excess of \$100.00 for a speaking engagement, participation in a seminar, discussion panel, or other activity which directly relates to the official duties of that public officer or the office of that public officer.



(b) No public officer elected state wide shall accept any monetary fee or honorarium for a speaking engagement, participation in a seminar, discussion panel, or other such activity.

(c) For purposes of this chapter, actual and reasonable expenses for food, beverages, travel, lodging, and registration for a meeting which are provided to permit participation in a panel or speaking engagement at the meeting shall not be monetary fees or honoraria. (Code 1981, § 21-5-11, enacted by Ga. L. 1992, p. 1075, § 3; Ga. L. 2010, p. 1173, § 7/SB 17.)

**The 2010 amendment**, effective January 10, 2011, substituted “\$100.00” for “\$101.00” in subsection (a). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government

Transparency and Campaign Finance Act of 2010.”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

## 21-5-13. Limitation of actions.

Any action alleging a violation of this chapter shall be commenced within three years after the date of filing of the first report containing the alleged violation; provided, however, that any action alleging a violation of this chapter shall be commenced within five years after the date of filing of the first report containing the alleged violation involving any person elected to serve for a term of four or more years or any candidate for an office with a term of four or more years. For purposes of this Code section, an action shall be deemed to have commenced against a person only when either:

(1) A complaint has been accepted by the commission in compliance with Code Section 21-5-7; or

(2) The commission or Attorney General serves on such person a notice of summons or hearing, in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” that alleges that such person has violated this chapter. (Code 1981, § 21-5-13, enacted by Ga. L. 2005, p. 859, § 9/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 1173, § 8/SB 17.)

**The 2010 amendment**, effective January 10, 2011, in the first sentence of the introductory paragraph, substituted “; provided, however, that” for “involving any person elected to serve for a term of two years, and” near the middle, and added “or any candidate for an office with a term of four or more years” at the end. See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code

section applies to all reports filed on and after January 10, 2011.

**21-5-14. E-mail address reporting requirements; exceptions.**

(a) Except as provided in subsection (b) of this Code section, each individual required by this chapter to file a report or disclosure statement with the commission shall provide the commission, in writing, with a current e-mail address and shall advise the commission, in writing, of any change to such address within ten days of any change to such address. Such information shall be provided to the commission prior to January 31 each year.

(b) City, county, and school board officials are not required to provide an e-mail address to the commission. (Code 1981, § 21-5-14, enacted by Ga. L. 2010, p. 1173, § 9/SB 17; Ga. L. 2011, p. 19, § 2/HB 232.)

**Effective date.** — This Code section became effective January 10, 2011. See the editor’s note for applicability.

**The 2011 amendment,** effective March 15, 2011, designated the existing provisions as subsection (a); substituted “Except as provided in subsection (b) of this Code section, each” for “Except” in the first sentence of subsection (a); and added subsection (b).

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively.” This Act became effective March 15, 2011.

**21-5-15. Notice to local officials regarding certain actions to be given by certified mail or statutory overnight delivery.**

When the commission gives notice to a local official referred to in subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3 of any of the actions listed in this Code section, such notice shall be given by certified mail or statutory overnight delivery. This Code section shall apply with respect to any notice of: the filing of a complaint; a technical defect in a filing; a failure to make a timely filing; or a late fee or other penalty. (Code 1981, § 21-5-15, enacted by Ga. L. 2011, p. 19, § 3/HB 232.)

**Effective date.** — This Code section became effective March 15, 2011.

**Editor’s notes.** — Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: “This Act shall become effective

upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well

as prospectively.” This Act became effective March 15, 2011.

## ARTICLE 2

### CAMPAIGN CONTRIBUTIONS

#### **21-5-30. Contributions made to candidate or campaign committee or for recall of a public officer.**

(a) Except as provided in subsection (e) of Code Section 21-5-34, no contributions to bring about the nomination or election of a candidate for any office shall be made or accepted except directly to or by a candidate or such candidate’s campaign committee which is organized for the purpose of bringing about the nomination or election of any such candidate; and no contributions to bring about the recall of a public officer or to oppose the recall of a public officer or to bring about the approval or rejection by the voters of a proposed constitutional amendment, state-wide referendum, or proposed question at the state, municipal, or county level shall be made or accepted except directly to or by a campaign committee organized for that purpose.

(b) Each candidate shall maintain records and file reports as required by this chapter or shall have a campaign committee for the purposes of maintaining records and filing reports as required by this chapter. Every campaign committee shall have a chairperson and a treasurer, except that the candidate may serve as the chairperson and treasurer. Before a campaign committee accepts contributions, the name and address of the chairperson and treasurer shall be filed with the commission. When a candidate has been elected to public office, the registration of that candidate’s campaign committee with the commission shall remain in effect so long as the candidate remains in office until and unless the registration is canceled by the campaign committee or the candidate. The same person may serve as chairperson and treasurer. No contributions shall be accepted by or on behalf of the campaign committee at a time when there is a vacancy in the office of chairperson or treasurer of the campaign committee.

(c) Contributions of money received pursuant to subsection (a) of this Code section shall be deposited in a campaign depository account opened and maintained by the candidate or the campaign committee. The account may be an interest-bearing account; provided, however, that any interest earned on such account shall be reported and may only be used for the purposes allowed for contributions under this chapter. Those who elect the separate accounting option as provided in Code Section 21-5-43 may also open, but are not required to open, a separate campaign depository account for each election for which



contributions are accepted and allocated beyond their next upcoming election.

(d) Unless otherwise reported individually, where separate contributions of less than \$100.00 are knowingly received from a common source, such contributions shall be aggregated for reporting purposes. For purposes of fulfilling such aggregation requirement, members of the family, members of the same firm or partnership, or employees of the same person, as defined in paragraph (19) of Code Section 21-5-3, shall be considered to be a common source; provided, however, that the purchase of tickets for not more than \$25.00 each and for or attendance at a fundraising event by members of the family, members of the same firm or partnership, or employees of the same person shall not be considered to be contributions from a common source except to the extent that tickets are purchased as a block.

(e) The making and acceptance of anonymous contributions are prohibited. Any anonymous contributions received by a candidate or campaign committee shall be transmitted to the state treasurer for deposit in the state treasury, and the fact of such contribution and transmittal shall be reported to the commission.

(f)(1) For purposes of this subsection, the term:

(A) "Public utility corporation regulated by the Public Service Commission" includes, but is not limited to, an electric membership corporation.

(B) "Electric membership corporation" means a public utility corporation regulated by the Public Service Commission operating as an electric membership corporation under the provisions of Article 4 of Chapter 3 of Title 46.

(2) Except as limited by Code Section 21-5-30.1 or this subsection, a public utility corporation regulated by the Public Service Commission shall be allowed to make contributions to political campaigns. Any contributions made by a public utility corporation regulated by the Public Service Commission to a political campaign shall not be included as recoverable costs in any rate-making or rate-setting proceedings before the Public Service Commission. Notwithstanding the provisions of this Code section or any other provision of law to the contrary, no electric membership corporation and no nonprofit corporation, group, or association, the membership of which consists of electric membership corporations, shall be authorized to make any contribution to a political campaign. Notwithstanding the foregoing, nothing in this Code section shall be construed to prohibit a nonprofit corporation, group, or association, the membership of which consists of electric membership corporations, from establishing, administering, and soliciting contributions for a political action committee from

officers, directors, employees, agents, contractors, and members of such entities so long as such actions and contributions do not otherwise violate the provisions of this chapter.

(g) Neither a candidate who is not a public officer nor his or her campaign committee may lawfully accept a campaign contribution until the candidate has filed with the commission a declaration of intention to accept campaign contributions which shall include the name and address of the candidate and the names and addresses of his or her campaign committee officers, if any. (Code 1981, § 21-5-30, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 9; Ga. L. 1987, p. 458, § 2; Ga. L. 1988, p. 603, § 1; Ga. L. 1990, p. 922, § 2; Ga. L. 1992, p. 1075, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 258, §§ 2, 3; Ga. L. 1996, p. 1092, § 1; Ga. L. 2005, p. 859, § 10/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2010, p. 1173, § 10/SB 17; Ga. L. 2011, p. 569, § 1/SB 160.)

**The 2010 amendments.** — The first 2010 amendment, effective July 1, 2010, substituted “state treasurer” for “director of the Office of Treasury and Fiscal Services” in the middle of the second sentence of subsection (e). The second 2010 amendment, effective January 10, 2011, substituted “\$100.00” for “\$101.00” in the first sentence of subsection (d); and deleted “or appropriate local filing officer” following “with the commission” in subsection (g). See the editor’s note for applicability.

**The 2011 amendment,** effective May 12, 2011, rewrote subsection (f).

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

### **21-5-30.1. Contributions by regulated entities to elected executive officers or candidates.**

(a) Except as otherwise provided in this subsection, the definitions set forth in Code Section 21-5-3 shall be applicable to the provisions of this Code section. As used in this Code section, the term:

(1) “Campaign committee” means the candidate, person, or committee which accepts contributions to bring about the nomination for election or election of an individual to the office of an elected executive officer.

(2) “Contribution” means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money, or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of an individual to the office of an elected executive officer or encouraging the holder of such office to seek reelection. The term “contribution” shall include the payment of a

qualifying fee for and on behalf of a candidate for the office of an elected executive officer and any other payment or purchase made for and on behalf of the holder of the office of an elected executive officer or for or on behalf of a candidate for that office when such payment or purchase is made for the purpose of influencing the nomination for election or election of the candidate and is made pursuant to the request or authority of the holder of such office, the candidate, the campaign committee of the candidate, or any other agent of the holder of such office or the candidate. The term "contribution" shall not include the value of personal services performed by persons who serve on a voluntary basis without compensation from any source.

(3) "Elected executive officer" means the Secretary of State, Attorney General, State School Superintendent, Commissioner of Insurance, Commissioner of Agriculture, Commissioner of Labor, and members of the Public Service Commission.

(4) "Political action committee" means any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations aggregating in excess of \$1,000.00 during a calendar year from persons who are members or supporters of the committee and which distributes these funds as contributions to one or more campaign committees of candidates for public office. Such term does not mean a campaign committee.

(5) "Regulated entity" means any person who is required by law to be licensed by an elected executive officer or a board under the jurisdiction of an elected executive officer, any person who leases property owned by or for a state department, any person who engages in a business or profession which is regulated by an elected executive officer or by a board under the jurisdiction of an elected executive officer, or any public utility corporation regulated by the Public Service Commission. For purposes of this paragraph, public utility corporation regulated by the Public Service Commission shall have the same meaning as provided by subsection (f) of Code Section 21-5-30.

(b) No regulated entity and no person or political action committee acting on behalf of a regulated entity shall make a contribution to or on behalf of a person holding office as an elected executive officer regulating such entity or to or on behalf of a candidate for the office of an elected executive officer regulating such entity or to or on behalf of a campaign committee of any such candidate.

(c) No person holding office as an elected executive officer and no candidate for the office of an elected executive officer and no campaign committee of a candidate for the office of an elected executive officer shall accept a contribution in violation of subsection (b) of this Code section.



(d) Nothing contained in this Code section shall be construed to prevent any person who may be employed by a regulated entity, including a person in whose name a license or lease is held, or who is an officer of a regulated entity from voluntarily making a campaign contribution from that person's personal funds to or on behalf of a person holding office as an elected executive officer regulating such entity or to or on behalf of a candidate for the office of an elected executive officer regulating such entity or to or on behalf of a campaign committee of any such candidate; provided, however, that:

(1) The elected executive officer or candidate receiving one or more campaign contributions described in this subsection shall in his or her disclosure report under Code Section 21-5-34 separately identify each contribution and the total of contributions which he or she knows or should have reason to know are described in this subsection; and

(2) It shall be unlawful for any regulated entity or elected executive officer to require another by coercive action to make any such contribution. (Code 1981, § 21-5-30.1, enacted by Ga. L. 1989, p. 784, § 1; Ga. L. 1992, p. 1075, § 4A; Ga. L. 2009, p. 620, § 2/SB 168; Ga. L. 2011, p. 569, § 2/SB 160.)

**The 2009 amendment**, effective May 4, 2009, in subsection (d), in the introductory paragraph, inserted "or who is an officer of a regulated entity" in the middle and added "; provided, however, that:" at the end, added paragraph (d)(1), added the paragraph (d)(2) designation, and, in paragraph (d)(2), deleted "and a violation of this Code section" preceding "for any" and substituted "elected executive officer" for "other person".

**The 2011 amendment**, effective May

12, 2011, in paragraph (a)(3), deleted "and" preceding "Commissioner of Labor" and added ", and members of the Public Service Commission" at the end; in paragraph (a)(5), in the first sentence, deleted "or" preceding "any person who engages" and added ", or any public utility corporation regulated by the Public Service Commission" at the end, and added the last sentence; and added "and" at the end of paragraph (d)(1).

## 21-5-30.2. Contributions by public agencies.

(a) Except as otherwise provided in this subsection, the definitions set forth in Code Section 21-5-3 shall be applicable to the provisions of this Code section. As used in this Code section, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, commission, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of this state; and

(D) Every city, county, regional, or other authority established pursuant to the laws of this state.

(2) “Contribution” means a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money, or anything of value conveyed or transferred by or on behalf of an agency, without receipt of payment therefor, to any campaign committee, political action committee, or political organization or to any candidate for campaign purposes.

(3) “Elector” means any person who shall possess all of the qualifications for voting now or hereafter prescribed by the laws of this state and who shall have registered in accordance with Chapter 2 of this title.

(4) “Political action committee” means any committee, club, association, partnership, corporation, labor union, or other group of persons which receives donations aggregating in excess of \$1,000.00 during a calendar year from persons who are members or supporters of the committee and which distributes these funds as contributions to one or more campaign committees of candidates for public office. Such term does not mean a campaign committee.

(5) “Political organization” means an affiliation of electors organized for the purpose of influencing or controlling the policies and conduct of government through the nomination of candidates for public office and, if possible, the election of its candidates to public office.

(6) “Public meeting place” means any county, municipal, or other public building suitable and ordinarily used for public gatherings.

(b) No agency and no person acting on behalf of an agency shall make, directly or indirectly, any contribution to any campaign committee, political action committee, or political organization or to any candidate; but nothing in this Code section shall prohibit the furnishing of office space, facilities, equipment, goods, or services to a public officer for use by the public officer in such officer’s fulfillment of such office.

(c) No campaign committee, political action committee, or political organization or candidate shall accept a contribution in violation of subsection (b) of this Code section.

(d) Nothing contained in this Code section shall be construed to:

(1) Affect the authority of the State Personnel Board regarding the regulation of certain political activities of public employees in the classified service as defined by Code Section 45-20-2;

(2) Affect the authority of any agency regarding the regulation of the political activities of such agency's employees;

(3) Affect the use of the capitol building and grounds as specified in Code Section 50-16-4; or

(4) Prohibit the use of public meeting places by political organizations when such meeting places are made available to different political organizations on an equal basis; provided, however, that this paragraph shall not be construed to create a right for a political organization to use a public meeting place. (Code 1981, § 21-5-30.2, enacted by Ga. L. 1990, p. 368, § 1; Ga. L. 1992, p. 56, § 1; Ga. L. 1994, p. 258, § 4; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-31/HB 642.)

**The 2009 amendment**, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" at the end of paragraph (d)(1).

**The 2012 amendment**, effective July 1, 2012, substituted "classified service as defined by Code Section 45-20-2" for "classified service of the State Personnel Administration" in paragraph (d)(1); and inserted "that" in paragraph (d)(4).

**Editor's notes.** — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

## 21-5-33. Disposition of contributions.

### JUDICIAL DECISIONS

**Relationship to bankruptcy.** — In a case in which the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, the limitation in O.C.G.A. § 21-5-33(c) that campaign funds shall not constitute personal assets was not a restriction on the transfer of a beneficial interest of the debtor in a trust as required by 11 U.S.C. § 541(c)(2). In re Chambers, 451 B.R. 621 (Bankr. N.D. Ga. 2011).

In a case in which the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, although O.C.G.A. § 21-5-33(a)-(c) restricted use of the campaign funds, the anti-alienation provision in 11 U.S.C. § 541(c)(1)(A) prevented the state law from excluding the funds from becoming property of the estate. In re Chambers, 451 B.R. 621 (Bankr. N.D. Ga. 2011).

## 21-5-34. Disclosure reports.

(a)(1)(A) The candidate or the chairperson or treasurer of each campaign committee organized to bring about the nomination or



election of a candidate for any office and the chairperson or treasurer of every campaign committee designed to bring about the recall of a public officer or to oppose the recall of a public officer or designed to bring about the approval or rejection by the voters of any proposed constitutional amendment, state-wide proposed question, or state-wide referendum shall electronically sign and file with the commission the required campaign contribution disclosure reports.

(B) The chairperson or treasurer of each independent committee shall file the required disclosure reports with the commission.

(2)(A) Any campaign committee which accepts contributions or makes expenditures designed to bring about the approval or rejection by the voters of any proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state shall register with the commission and file campaign contribution disclosure reports as prescribed by this chapter; provided, however, that such reports shall only be required if such campaign committee has received contributions which total more than \$500.00 or if such campaign committee has made expenditures which total more than \$500.00. All advertising pertaining to referendums shall identify the principal officer of such campaign committee by listing or stating the name and title of the principal officer.

(B) If a campaign committee is required to file a report under subparagraph (A) of this paragraph, such report shall be electronically filed with the commission. Any such report shall be filed 15 days prior to the date of the election; and a final report shall be filed prior to December 31 of the election year.

(b)(1) All reports shall list the following:

(A) As to any contribution of more than \$100.00, its amount and date of receipt, the election for which the contribution has been accepted and allocated, along with the name and mailing address of the contributor, and, if the contributor is an individual, that individual's occupation and the name of his or her employer. Such contributions shall include, but shall not be limited to, the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events coordinated for the purpose of raising campaign contributions for the reporting person;

(B) As to any expenditure of more than \$100.00, its amount and date of expenditure, the name and mailing address of the recipient receiving the expenditure, and, if that recipient is an individual, that individual's occupation and the name of his or her employer and the general purpose of the expenditure;

(C) When a contribution consists of a loan, advance, or other extension of credit, the report shall also contain the name of the lending institution or party making the advance or extension of credit and the names, mailing addresses, occupations, and places of employment of all persons having any liability for repayment of the loan, advance, or extension of credit; and, if any such persons shall have a fiduciary relationship to the lending institution or party making the advance or extension of credit, the report shall specify such relationship;

(D) Total contributions received and total expenditures shall be reported for an election cycle as follows:

(i) The first report of an election cycle shall list the cash on hand brought forward from the previous election cycle, if any, and the total contributions received during the period covered by the report;

(ii) Subsequent reports shall list the total contributions received during the period covered by the report and the cumulative total of contributions received during the election cycle;

(iii) The first report of an election cycle shall list the total expenditures made during the period covered by the report;

(iv) Subsequent reports shall list the total expenditures made during the period covered by the report, the cumulative total of expenditures made during the election cycle, and net balance on hand; and

(v) If a public officer seeks reelection to the same public office, or if the public officer is a member of the General Assembly seeking reelection in another district as a result of redistricting, the net balance on hand at the end of the current election cycle shall be carried forward to the first report of the applicable new election cycle;

(E) The corporate, labor union, or other affiliation of any political action committee or independent committee making a contribution of more than \$100.00;

(F) Any investment made with funds of a campaign committee, independent committee, or political action committee and held outside such committee's official depository account during each reporting period for which an investment exists or a transaction applying to an identifiable investment is made. The report shall identify the name of the entity or person with whom such investment was made, the initial and any subsequent amount of such investment if such investment was made during the reporting

period, and any profit or loss from the sale of such investment occurred during such reporting period; and

(G) Total debt owed on the last day of the reporting period.

(2) Each report shall be in such form as will allow for the separate identification of a contribution or contributions which are less than \$100.00 but which become reportable due to the receipt of an additional contribution or contributions which when combined with such previously received contribution or contributions cumulatively equal or exceed \$100.00.

(c) Candidates or campaign committees which accept contributions, make expenditures designed to bring about the nomination or election of a candidate, or have filed a declaration of intention to accept campaign contributions pursuant to subsection (g) of Code Section 21-5-30 shall file campaign contribution disclosure reports in compliance with the following schedule:

(1) In each nonelection year on June 30 and December 31;

(2) In each election year:

(A) On March 31, June 30, September 30, October 25, and December 31;

(B) Six days before any run-off primary or election in which the candidate is listed on the ballot; and

(C) During the period of time between the last report due prior to the date of any election for which the candidate is qualified and the date of such election, all contributions of \$1,000.00 or more shall be reported within two business days of receipt to the commission and also reported on the next succeeding regularly scheduled campaign contribution disclosure report;

(3) If the candidate is a candidate in a special primary or special primary runoff, 15 days prior to the special primary and six days prior to the special primary runoff; and

(4) If the candidate is a candidate in a special election or special election runoff, 15 days prior to the special election and six days prior to the special election runoff.

All persons or entities required to file reports shall have a five-day grace period in filing the required reports, except that the grace period shall be two days for required reports prior to run-off primaries or run-off elections, and no grace period shall apply to contributions required to be reported within two business days. Reports required to be filed within two business days of a contribution shall be reported by facsimile or electronic transmission to the commission. Each report required in the



election year shall contain cumulative totals of all contributions which have been received and all expenditures which have been made in support of the campaign in question and which are required, or previously have been required, to be reported.

(d) In the event any candidate covered by this chapter has no opposition in either a primary or a general election and receives no contribution of more than \$100.00, such candidate shall only be required to make the initial and final report as required under this chapter.

(e) Any person who makes contributions to, accepts contributions for, or makes expenditures on behalf of candidates, and any independent committee, shall file a registration with the commission in the same manner as is required of campaign committees prior to accepting or making contributions or expenditures. Such persons, other than independent committees, shall also file campaign contribution disclosure reports with the commission at the same times as required of the candidates they are supporting. The following persons shall be exempt from the foregoing registration and reporting requirements:

(1) Individuals making aggregate contributions of \$25,000.00 or less directly to candidates or the candidates' campaign committees in one calendar year;

(2) Persons other than individuals making aggregate contributions and expenditures to or on behalf of candidates of \$25,000.00 or less in one calendar year; and

(3) Contributors who make contributions to only one candidate during one calendar year.

(f)(1) Any independent committee which accepts contributions or makes expenditures for the purpose of affecting the outcome of an election or advocates the election or defeat of any candidate shall register with the commission prior to accepting contributions or making expenditures and shall file disclosure reports with the commission as follows:

(A) On the first day of each of the two calendar months preceding any such election;

(B) Two weeks prior to the date of such election; and

(C) Within the two-week period prior to the date of such election the independent committee shall report within two business days any contributions or expenditure of more than \$1,000.00.

The independent committee shall file a final report prior to December 31 of the election year and shall file supplemental reports on June 30

and December 31 of each year that such independent committee continues to accept contributions or make expenditures.

(2) Reports filed by independent committees shall list the following:

(A) The amount and date of receipt, along with the name, mailing address, occupation, and employer of any person making a contribution of more than \$100.00;

(B) The name, mailing address, occupation, and employer of any person to whom an expenditure or provision of goods or services of the value of more than \$100.00 is made and the amount, date, and general purpose thereof, including the name of the candidate or candidates, if any, on behalf of whom, or in support of or in opposition to whom, the expenditure or provision was made;

(C) Total expenditures made as follows:

(i) Expenditures shall be reported for the applicable reporting year;

(ii) The first report of a reporting year shall list the total expenditures made during the period covered by the report; and

(iii) Subsequent reports shall list the total expenditures made during the period covered by the report, the cumulative total of expenditures made during the reporting year, and net balance on hand; and

(D) The corporate, labor union, or other affiliation of any political action committee, candidate, campaign committee, or independent committee making a contribution of the value of more than \$100.00.

(3) Whenever any independent committee makes an expenditure for the purpose of financing any communication intended to affect the outcome of an election, such communication shall clearly state that it has been financed by such independent committee.

(g) Any campaign committee which accepts contributions or makes expenditures designed to bring about the recall of a public officer or to oppose the recall of a public officer shall file campaign contribution disclosure reports with the commission as follows:

(1) An initial report shall be filed within 15 days after the date when the official recall petition forms were issued to the sponsors;

(2) A second report shall be filed 45 days after the filing of the initial report;

(3) A third report shall be filed within 20 days after the election superintendent certifies legal sufficiency or insufficiency of a recall petition; and

(4) A final report shall be filed prior to December 31 of the year in which the recall election is held or, in any case where such recall election is not held, a final report shall be filed prior to December 31 of any year in which such campaign committee accepts such contributions or makes such expenditures.

(h) Any campaign committee which accepts contributions or makes expenditures designed to bring about the approval or rejection by the voters of a proposed constitutional amendment or a state-wide referendum shall file a campaign contribution disclosure report with the commission 75, 45, and 15 days prior to the date of the election and shall file a final report prior to December 31 of the election year.

(i)(1) Any person elected to a public office who is required to file campaign contribution disclosure reports pursuant to this article shall, upon leaving public office with excess contributions, be required to file supplemental campaign contribution disclosure reports on June 30 and December 31 of each year until such contributions are expended in a campaign for elective office or used as provided in subsection (b) of Code Section 21-5-33.

(2) Any person who is an unsuccessful candidate in an election and who is required to file campaign contribution disclosure reports pursuant to this article shall for the remainder of the election cycle file such reports at the same times as a successful candidate and thereafter, upon having excess contributions from such campaign, be required to file a supplemental campaign contribution disclosure report no later than December 31 of each year until such contributions are expended in a campaign for elective office or used as provided in subsection (b) of Code Section 21-5-33. Any unsuccessful candidate in an election who is required to file campaign contribution disclosure reports pursuant to this article and who receives contributions following such election to retire debts incurred in such campaign for elective office shall be required to file a supplemental campaign contribution disclosure report no later than December 31 of each year until such unpaid expenditures from such campaign are satisfied.

(j) Notwithstanding any other provision of this chapter to the contrary, soil and water conservation district supervisors elected pursuant to Article 2 of Chapter 6 of Title 2, the "Soil and Water Conservation Districts Law," shall not be required to file campaign contribution disclosure reports under this Code section.

(k)(1) In addition to other penalties provided under this chapter, a late fee of \$125.00 shall be imposed for each report that is filed late, and notice of such late fee shall be sent to the candidate and the candidate's committee by registered or certified mail or statutory



overnight delivery, return receipt requested, and shall include the schedule of increasing late fees for late filings and the dates upon which such late fees shall be increased. In addition, a late fee of \$250.00 shall be imposed on the fifteenth day after the due date for such report if the report has not been filed by such date; provided, however, that a 15 day extension period shall be granted on the final report. A late fee of \$1,000.00 shall be imposed on the forty-fifth day after the due date for such report if such report has not been filed. Campaign committee funds shall not be used to pay such penalty. Notice by electronic means does not satisfy the requirements of this paragraph; and any increased late fees shall be stayed until at least ten days after proper notice has been given as specified in this paragraph.

(2) The commission shall retain \$25.00 of the first late fee received for processing pursuant to the provisions of Code Section 45-12-92.1.

(l) It shall be the duty of the commission when it receives for filing any disclosure report or statement or other document that may be filed by mail to maintain with the filed document a copy of the postal markings or statutory overnight delivery service markings of any envelope, package, or wrapping in which the document was delivered for filing if mailed or sent after the date such filing was due.

(m) Any person or entity which is required to be registered with the commission shall file a termination statement together with its final campaign contribution disclosure report as required by this Code section. The termination statement shall identify the person responsible for maintaining campaign records as required by this chapter.

(n) The commission shall not require the reporting of any more information in a campaign contribution disclosure report than is expressly required to be disclosed by this Code section. (Code 1981, § 21-5-34, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 11; Ga. L. 1987, p. 458, §§ 4, 5; Ga. L. 1988, p. 603, §§ 4, 5; Ga. L. 1989, p. 10, § 1; Ga. L. 1990, p. 643, § 1; Ga. L. 1990, p. 922, §§ 3, 4; Ga. L. 1992, p. 1075, § 6; Ga. L. 1994, p. 257, § 1; Ga. L. 1994, p. 258, §§ 5-9; Ga. L. 1996, p. 26, § 1; Ga. L. 2000, p. 1491, § 3; Ga. L. 2005, p. 859, § 12/HB 48; Ga. L. 2006, p. 69, § 1/SB 467; Ga. L. 2009, p. 620, § 3/SB 168; Ga. L. 2010, p. 9, § 1-47/HB 1055; Ga. L. 2010, p. 1173, § 11/SB 17; Ga. L. 2011, p. 19, § 4/HB 232; Ga. L. 2011, p. 590, § 1/HB 143.)

**The 2009 amendment**, effective May 4, 2009, in subparagraph (a)(1)(A), inserted a comma following “office”, substituted “offices,” for “offices or the General Assembly”, and deleted the former second sentence which read: “A candidate for membership in the General Assembly or

the chairperson or treasurer of such candidate’s campaign committee shall file such candidate’s reports with the commission and a copy of such report with the election superintendent of the county of such candidate’s residence.”; and, in the introductory language of subsection (e),

deleted “, but such persons shall not be required to file copies of campaign contributions disclosure reports with local election superintendents as is required of candidates for membership in the General Assembly” following “they are supporting” at the end of the second sentence.

**The 2010 amendments.** — The first 2010 amendment, effective May 12, 2010, in subsection (l), in the first sentence, substituted “a filing fee of \$100.00” for “an additional filing fee of \$25.00”, in the second sentence, substituted “\$100.00” for “\$25.00” near the beginning, and deleted the proviso at the end, which read: “; provided, however, a 15 day extension period shall be granted on the final report”, and added the third sentence. The second 2010 amendment, effective January 10, 2011, rewrote this Code section. See the Code Commission note regarding the effect of these amendments. See the editor’s note for applicability.

**The 2011 amendments.** — The first 2011 amendment, effective March 15, 2011, in paragraph (k)(1), inserted “that” in the proviso near the end of the second sentence, and added the last sentence. The second 2011 amendment, effective May 12, 2011, part of an Act to revise, modernize, and correct this title, substituted “provided, however, that” for “provided, however,” in paragraph (k)(1).

**Code Commission notes.** — The amendment of this Code section by Ga. L. 2010, p. 9, § 1-47, irreconcilably conflicted

with and was treated as superseded by Ga. L. 2010, p. 1173, § 11. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part: “This Act shall become effective on January 10, 2011, and shall apply to all reports filed on and after such date; provided, however, that if Code Section 45-12-92.1 as enacted by HB 1055 at the regular session of the 2010 General Assembly does not become law, then the following provisions as enacted by this Act shall not become effective and shall be reserved instead: paragraph (2) of subsection (k) of Code Section 21-5-34; paragraph (2) of subsection (f) of Code Section 21-5-50; division (f)(2)(D)(ii) of Code Section 21-5-71; and division (f)(2)(E)(ii) of Code Section 21-5-71.” HB 1055 became effective May 12, 2010.

Ga. L. 2011, p. 19, § 10, provides: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively.” This Act became effective March 15, 2011.

## RESEARCH REFERENCES

**ALR.** — Constitutionality, construction, and application of statute or regulatory action respecting political advertising — print media cases, 51 ALR6th 359.

Constitutionality, construction, and ap-

plication of statute or regulatory activity respecting political advertising nonprint media cases, or cases implicating both print and nonprint media, 53 ALR6th 491.

### 21-5-34.1. Filing campaign contribution disclosure reports electronically.

(a) Candidates, candidate committees, and public officers who are required to file campaign contribution disclosure reports shall use electronic means to file such reports with the commission using means prescribed by the commission to file such reports.

(b) The electronic filing of any campaign disclosure report required under this article shall constitute an affirmation that such report is true, complete, and correct.

(c) Candidates seeking election to county or municipal offices may use electronic means to file their campaign contribution disclosure reports with the commission or may file by certified mail or statutory overnight delivery.

(d) Political action committees, independent committees, and any persons otherwise required by this article to file campaign contribution disclosure reports shall use electronic means to file such reports with the commission upon having raised or spent \$5,000.00 in a calendar year, and no paper copy of the report shall be filed. Under that threshold, electronic filing is permitted and encouraged but not required.

(e) The electronic filing of any campaign contribution disclosure report required under this article shall constitute an affirmation that the report is true, complete, and correct. (Code 1981, § 21-5-34.1, enacted by Ga. L. 2000, p. 1491, § 3; Ga. L. 2005, p. 859, § 13/HB 48; Ga. L. 2009, p. 620, § 4/SB 168; Ga. L. 2010, p. 1173, § 12/SB 17; Ga. L. 2011, p. 19, § 5/HB 232.)

**The 2009 amendment**, effective May 4, 2009, substituted the present provisions of subsection (e) for the former provisions, which read: “When campaign contribution disclosure reports are filed electronically as provided in subsections (a) through (d) of this Code section, the filer shall only submit to the commission a notarized affidavit certifying that the electronic filing is correct by United States mail, with adequate postage affixed.”

**The 2010 amendment**, effective January 10, 2011, rewrote this Code section. See the editor’s note for applicability.

**The 2011 amendment**, effective March 15, 2011, substituted the present provisions of subsection (c) for the former provisions, which read: “Candidates seeking election to county or municipal offices shall use electronic means to file their campaign contribution disclosure reports with the commission upon having raised or spent a minimum of \$20,000.00 in an election cycle, but contributions and expenditures received or made prior to

reaching such threshold need not be electronically filed if previously reported, except as cumulative totals. Under that threshold, electronic filing is permitted and encouraged but not required.”

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively.” This Act became effective March 15, 2011.



**21-5-36. Disposition of reports; handling of complaints and violations.**

(a)(1) It shall be the duty of the commission to make the campaign contribution disclosure reports available for public inspection and copying during regular office hours commencing as soon as practicable after such reports are filed. The commission shall have the authority to charge a fee for copying such reports not to exceed the actual cost of such copying. The commission shall preserve such reports for a period of five years from the date upon which they are received.

(2) A qualifying officer shall notify the commission in writing of the names and addresses of all candidates and offices sought in any election within ten days of the close of the qualification period.

(b) After receiving original reports, the commission has the duty to inspect each report filed by candidates or by a campaign committee for conformity with the law and to notify the candidate or campaign committee immediately if the report does not conform with the law or is in technical violation of filing requirements. Such notification shall be by electronic means and regular United States mail.

(c) Within ten business days of the close of the qualification period, qualifying officers shall electronically report to the commission the names and addresses of all candidates and offices sought by each candidate in an election and the qualifying date for such candidate. (Code 1981, § 21-5-36, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 12; Ga. L. 2010, p. 1173, § 13/SB 17.)

**The 2010 amendment**, effective January 10, 2011, rewrote subsection (a); in subsection (b), in the first sentence, substituted “After receiving original reports, the commission” for “The commission or filing officer receiving original reports” at the beginning, deleted “with such commission or officer” preceding “by candidates” near the middle, deleted “, is unsigned” following “with the law”, deleted “otherwise” preceding “in technical” near the end, and added the last sentence; and added subsection (c). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

## ARTICLE 2A

## CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE

**21-5-40. Definitions.**

As used in this article, the term:

(1) “Affiliated committees” means any two or more political committees (including a separate segregated fund) established, financed, maintained, or controlled by the same business entity, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof.

(2) “Affiliated corporation” means with respect to any business entity any other business entity related thereto: as a parent business entity; as a subsidiary business entity; as a sister business entity; by common ownership or control; or by control of one business entity by the other.

(3) “Business entity” shall have the same meaning as provided in Code Section 21-5-3.

(4) Reserved.

(5) “Person” means an individual.

(6) “Political committee” means: (A) any partnership, committee, club, association, organization, party caucus of the House of Representatives or the Senate, or similar entity (other than a business entity) or any other group of persons or entities which makes a contribution; or (B) any separate segregated fund.

(6.1) “Political party” means any political party as that term is defined in paragraph (25) of Code Section 21-2-2, as amended; provided, however, that for purposes of this article, local, state, and national committees shall be separate political parties.

(6.2) “Public office” means the office of each elected public officer as specified in paragraph (22) of Code Section 21-5-3.

(7) “Separate segregated fund” means a fund which is established, administered, and used for political purposes by a business entity, labor organization, membership organization, or cooperative and to which the business entity, labor organization, membership organization, or cooperative solicits contributions. (Code 1981, § 21-5-40, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 7; Ga. L. 1994, p. 258, § 11; Ga. L. 1998, p. 295, § 3; Ga. L. 2000, p. 1491, § 4; Ga. L. 2001, p. 20, § 1; Ga. L. 2005, p. 859, § 15/HB 48; Ga. L. 2010, p. 1173, § 14/SB 17.)

**The 2010 amendment**, effective January 10, 2011, substituted “Reserved” for the former provisions of paragraph (4), which read: “‘Election year’ shall be construed and applied separately for each elective office and means for each elective office the calendar year during which a regular or special election to fill such office is held.”; and deleted paragraph (4.1), which read: “‘Nonelection year’ shall be construed and applied separately for each elective office and means for each elective office any calendar year during which there is no regular or special election to fill

such office.” See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

### **21-5-41. Maximum allowable contributions.**

(a) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for state-wide elected office which in the aggregate for an election cycle exceed:

- (1) Five thousand dollars for a primary election;
- (2) Three thousand dollars for a primary run-off election;
- (3) Five thousand dollars for a general election; and
- (4) Three thousand dollars for a general election runoff.

(b) No person, corporation, political committee, or political party shall make, and no candidate or campaign committee shall receive from any such entity, contributions to any candidate for the General Assembly or public office other than state-wide elected office which in the aggregate for an election cycle exceed:

- (1) Two thousand dollars for a primary election;
- (2) One thousand dollars for a primary run-off election;
- (3) Two thousand dollars for a general election; and
- (4) One thousand dollars for a general election runoff.

(c) No business entity shall make any election contributions to any candidate which when aggregated with contributions to the same candidate for the same election from any affiliated corporations exceed the per election maximum allowable contribution limits for such candidate as specified in subsection (a) of this Code section.

(d) Candidates and campaign committees may separately account for contributions pursuant to Code Section 21-5-43. Candidates and campaign committees not separately accounting for contributions pursuant to such Code section shall not accept contributions for any



election in an election cycle prior to the conclusion of the immediately preceding election in such cycle; provided, however, that contributions may be accepted for a primary election at any time in the election cycle prior to and including the date of such primary election. Upon conclusion of each election, contributions remaining unexpended may be expended on succeeding elections in the election cycle, and contributions not exceeding the contribution limits of this Code section may continue to be accepted for repayment of campaign obligations incurred as a candidate in that election except as provided in subsection (h) of this Code section.

(e) Candidates and campaign committees shall designate on their disclosure reports the election for which a contribution has been accepted. Any contribution not so designated shall be presumed to have been accepted for the election on or first following the date of the contribution.

(f) A contribution by a partnership shall be deemed to have been made pro rata by the partners as individuals for purposes of this Code section, as well as by the partnership in toto unless the partnership by proper action under its partnership agreement otherwise directs allocation of the contribution among the partners. At such direction of the partnership, the contribution may be allocated in any proportion among the partners, including to one or some but not all. Such allocation shall be indicated on the face of any instrument constituting the contribution or on an accompanying document referencing such instrument.

(g) The contribution limitations established by this Code section shall not apply to a loan or other contribution made to a campaign committee or candidate by the candidate or a member of the family of the candidate.

(h) Any candidate or campaign committee who incurs loans on or after January 9, 2006, in connection with the candidate's campaign for election shall not repay, directly or indirectly, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of the election for which the loan was made to the extent that such loans exceed \$250,000.00.

(i) The contribution limits established by this Code section shall not apply to a bona fide loan made to a candidate or campaign committee by a state or federally chartered financial institution or a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation if:

(1) Such loan is made in the normal course of business with the expectation on the part of all parties that such loan shall be repaid; and

(2) Such loan is based on the credit worthiness of the candidate and the candidate is personally liable for the repayment of the loan.

(j) The contribution limitations provided for in this Code section shall not include contributions or expenditures made by a political party in support of a party ticket or a group of named candidates.

(k) At the end of the election cycle applicable to each public office as to which campaign contributions are limited by this Code section and every four years for all other elections to which this Code section is applicable, the contribution limitations in this Code section shall be raised or lowered in increments of \$100.00 by regulation of the commission pursuant to a determination by the commission of inflation or deflation during such cycle or four-year period, as determined by the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor, and such limitations shall apply until next revised by the commission. The commission shall adopt rules and regulations for the implementation of this subsection. (Code 1981, § 21-5-41, enacted by Ga. L. 1990, p. 922, § 6; Ga. L. 1992, p. 1075, § 8; Ga. L. 1994, p. 258, § 11; Ga. L. 1995, p. 8, § 1; Ga. L. 2000, p. 1491, § 4; Ga. L. 2005, p. 859, § 16/HB 48; Ga. L. 2010, p. 1173, § 15/SB 17.)

**The 2010 amendment**, effective January 10, 2011, substituted “commission” for “State Ethics Commission” near the middle of the first sentence of subsection (k). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

**Law reviews.** — For article, “An Intersection of Laws: Citizens United v. FEC: Rational Coercion: Citizens United and a Modern Day Prisoner’s Dilemma,” see 27 Ga. St. U. L. Rev. 1105 (2011).

## ARTICLE 3

### FINANCIAL DISCLOSURE STATEMENTS

#### **21-5-50. Filing by public officers; filing by candidates for public office; filing by elected officials and members of the General Assembly; electronic filing; transfer of filings from the Secretary of State to the commission.**

(a)(1) Except as modified in subsection (c) of this Code section with respect to candidates for state-wide elected public office, each public officer, as defined in subparagraphs (A) through (D), (F), and (G) of paragraph (22) of Code Section 21-5-3, shall file with the commission not before the first day of January nor later than July 1 of each year in which such public officer holds office other than an election year a financial disclosure statement for the preceding calendar year; and each person who qualifies as a candidate for election as a public

officer, as defined in subparagraphs (A) through (D), (F), and (G) of paragraph (22) of Code Section 21-5-3, shall file with the commission, no later than the fifteenth day following the date of qualifying as a candidate, a financial disclosure statement for the preceding calendar year.

(2) Except as set forth in paragraph (3) of this subsection, a public officer, as defined in subparagraph (E) of paragraph (22) of Code Section 21-5-3, shall not be required to file a financial disclosure statement pursuant to this Code section. Each such public officer shall, however, be deemed to be a public official for purposes of Code Section 45-10-26 and shall be subject to the disclosure requirements set forth in Code Section 45-10-26. In addition, each such public officer shall file with the commission, prior to January 31 each year, an affidavit confirming that such public officer took no official action in the previous calendar year that had a material effect on such public officer's private financial or business interests.

(3) A public officer, as defined in subparagraph (E) of paragraph (22) of Code Section 21-5-3, who serves as a member of the commission shall be subject to the requirements for filing financial disclosure statements set forth in paragraph (1) of this subsection. In addition, each such public officer shall file with the commission, together with the financial disclosure statement, an affidavit confirming that such public officer took no official action in the previous calendar year that had a material effect on such public officer's private financial or business interests.

(4) Each member of the State Transportation Board shall file a financial disclosure statement for the preceding calendar year no later than the sixtieth day following such member's election to the State Transportation Board. Thereafter, each board member shall file by January 31 of each year a financial disclosure statement for the preceding year. In addition, each board member shall file with the commission, prior to January 31 of each year, an affidavit confirming that such board member took no official action in the previous calendar year that had a material effect on such board member's private financial or business interests.

(5) The commission shall review each financial disclosure statement to determine that such statement is in compliance with the requirements of this chapter.

(6) A public officer shall not, however, be required to file such a financial disclosure statement for the preceding calendar year in an election year if such public officer does not qualify for nomination for election to succeed himself or herself or for election to any other public office subject to this chapter. For purposes of this paragraph, a



public officer shall not be deemed to hold office in a year in which the public officer holds office for fewer than 15 days.

(b) A financial disclosure statement shall be in the form specified by the commission and shall identify:

(1) Each monetary fee or honorarium which is accepted by a filer from speaking engagements, participation in seminars, discussion panels, or other activities which directly relate to the official duties of the filer or the office of the public officer, with a statement identifying the fee or honorarium accepted and the person from whom it was accepted;

(2) All fiduciary positions held by the candidate for public office or the filer, with a statement of the title of each such position, the name and address of the business entity, and the principal activity of the business entity;

(3) The name, address, and principal activity of any business entity or investment, exclusive of the names of individual stocks and bonds in mutual funds, and the office held by and the duties of the candidate for public office or filer within such business entity as of December 31 of the covered year in which such candidate or officer has a direct ownership interest which:

(A) Is more than 5 percent of the total interests in such business;  
or

(B) Has a net fair market value of \$5,000.00 or more;

(4)(A) Each tract of real property in which the candidate for public office or filer has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value of \$5,000.00 or more. As used in this paragraph, the term "fair market" value means the appraised value of the property for ad valorem tax purposes. The disclosure shall contain the county and state, general description of the property, and whether the fair market value is between (i) \$5,000.00 and \$100,000.00; (ii) \$100,000.01 and \$200,000.00; or (iii) more than \$200,000.00.

(B) Each tract of real property in which the candidate for public office's spouse or filer's spouse has a direct ownership interest as of December 31 of the covered year when that interest has a fair market value of \$5,000.00 or more. The disclosure shall contain the county and state, general description of the property, and whether the fair market value is between (i) \$5,000.00 and \$100,000.00; (ii) \$100,000.01 to \$200,000.00; (iii) or more than \$200,000.00;

(5) The filer's occupation, employer, and the principal activity and address of such employer;

(6) The filer's spouse's name, occupation, employer, and the principal activity and address of such employer;

(7) If the filer has actual knowledge of such ownership interest, the name of any business or subsidiary thereof or investment, exclusive of the individual stocks, bonds, or mutual funds, as of December 31 of the covered year in which the filer's spouse or dependent children, jointly or severally, own a direct ownership interest which:

(A) Is more than 5 percent of the total interests in such business or investment, exclusive of the individual stocks and bonds in mutual funds; or

(B) Has a net fair market value of more than \$10,000.00

or in which the filer's spouse or any dependent child serves as an officer, director, equitable partner, or trustee; and

(8) All annual payments in excess of \$10,000.00 received by the filer or any business entity identified in paragraph (3) of this subsection from the state, any agency, department, commission, or authority created by the state, and authorized and exempted from disclosure under Code Section 45-10-25, and the agency, department, commission, or authority making the payments, and the general nature of the consideration rendered for the source of the payments.

(c)(1) Each person who qualifies with a political party as a candidate for party nomination to a public office elected state wide (including an incumbent public officer elected state wide qualifying to succeed himself or herself) shall file with the commission, not later than seven days after so qualifying, a financial disclosure statement. Each person who qualifies as a candidate for election to a public office elected state wide through a nomination petition or convention shall likewise file a financial disclosure statement not later than seven days after filing his or her notice of candidacy. Such financial disclosure statement shall comply with the requirements of subsections (a) and (b) of this Code section and shall in addition identify, for the preceding five calendar years:

(A) Each transaction or transactions which aggregate \$9,000.00 or more in a calendar year in which the candidate (whether for himself or herself or on behalf of any business) or any business in which such candidate or any member of his or her family has a substantial interest or is an officer of such business has transacted business with the government of the State of Georgia, the government of any political subdivision of the State of Georgia, or any agency of any such government; and

(B) Each transaction or transactions which aggregate \$9,000.00 or more in a calendar year in which the candidate or any business

in which such candidate or any member of his or her family has a substantial interest or is an officer of such business received any income of any nature from any person who was at the time of such receipt of income represented by a lobbyist registered with the commission pursuant to Article 4 of this chapter.

(2) The financial disclosure statement required by paragraph (1) of this subsection shall include an itemized list of the transactions required to be reported, including the date of, dollar amount of, and parties to each such transaction. However, with respect to any transactions of a privileged nature only the total amount of such transactions shall be required to be reported, and names, dates, amounts of individual transactions, and other identifying data may be omitted; and for this purpose "transactions of a privileged nature" shall include transactions between attorney and client, transactions between psychiatrist and patient, transactions between physician and patient, and any other transactions which are by law of a similar privileged and confidential nature.

(3) The financial disclosure statement required by paragraph (1) of this subsection shall be accompanied by a financial statement of the candidate's financial affairs for the calendar year prior to the year in which the election is held and the first quarter of the calendar year in which the election is held.

(4) As used in this subsection, the term:

(A) "Agency" means any agency, authority, department, board, bureau, commission, committee, office, or instrumentality of the State of Georgia or any political subdivision of the State of Georgia.

(B) "Financial statement" means a statement of a candidate's financial affairs in a form substantially equivalent to the short form financial statement required for bank directors under the rules of the Department of Banking and Finance.

(C) "Person" and "transact business" shall have the meanings specified in Code Section 45-10-20.

(D) "Substantial interest" means the direct or indirect ownership of 10 percent or more of the assets or stock of any business.

(5) Notwithstanding any other provisions of this subsection, if, due to a special election or otherwise, a person does not qualify as a candidate for nomination or election to public office until after the filing date otherwise applicable, such person shall make the filings required by this subsection within seven days after so qualifying.

(d) All state-wide elected officials and members of the General Assembly shall file financial disclosure statements electronically with



the commission. Local officials referred to in subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3 may file electronically or may file by certified mail or statutory overnight delivery.

(e) The electronic filing of any financial disclosure statement required under this article shall constitute an affirmation that the statement is true, complete, and correct.

(f)(1) In addition to other penalties provided in this chapter, a late fee of \$125.00 shall be imposed for each financial disclosure statement that is filed late, and notice of such late fee shall be sent to the board member, candidate, and the candidate's committee by registered or certified mail or statutory overnight delivery, return receipt requested, and shall include the schedule of increasing late fees for late filings and the dates upon which such late fees shall be increased. In addition, a late fee of \$250.00 shall be imposed on the fifteenth day after the due date for such statement if such statement has not been filed. A late fee of \$1,000.00 shall be imposed on the forty-fifth day after the due date for such statement if the statement has not been filed. Campaign committee funds shall not be used to pay such penalty. Notice by electronic means shall not satisfy the requirements of this paragraph; and any increased late fees shall be stayed until at least ten days after proper notice has been given as specified in this paragraph.

(2) The commission shall retain \$25.00 of the first late fee received for processing pursuant to the provisions of Code Section 45-12-92.1.

(g) The commission shall not require the reporting of any more information in a financial disclosure statement than is expressly required to be disclosed by this Code section. (Code 1981, § 21-5-50, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, §§ 13, 14; Ga. L. 1988, p. 603, § 6; Ga. L. 1989, p. 10, § 1; Ga. L. 1990, p. 922, §§ 7, 8; Ga. L. 1992, p. 56, § 1; Ga. L. 1992, p. 1075, §§ 14, 15; Ga. L. 1993, p. 118, § 1; Ga. L. 1994, p. 258, § 12; Ga. L. 2005, p. 859, § 18/HB 48; Ga. L. 2009, p. 620, § 5/SB 168; Ga. L. 2010, p. 9, § 1-48/HB 1055; Ga. L. 2010, p. 1173, § 16/SB 17; Ga. L. 2011, p. 19, § 6/HB 232.)

**The 2009 amendment**, effective May 4, 2009, substituted the present provisions of subsection (e) for the former provisions, which read: "Where the financial disclosure statements required by paragraph (1) of subsection (a) of this Code section are filed electronically, the public officer, as that term is defined in subparagraphs (A) through (E) of paragraph (22) of Code Section 21-5-3, shall file a notarized affidavit certifying that the electronic filing is correct and no paper copy of

the financial disclosure statement shall be required to be filed."

**The 2010 amendments.** — The first 2010 amendment, effective May 12, 2010, added paragraph (a)(6). The second 2010 amendment, effective January 10, 2011, rewrote this Code section. See the Code Commission note regarding the effect of these amendments. See the editor's note for applicability.

**The 2011 amendment**, effective March 15, 2011, added the second sen-

tence in subsection (d); and added the fourth sentence in paragraph (f)(1).

**Code Commission notes.** — The amendment of this Code section by Ga. L. 2010, p. 9, § 1-48, irreconcilably conflicted with and was treated as superseded by Ga. L. 2010, p. 1173, § 16. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor's notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part: "This Act shall become effective on January 10, 2011, and shall apply to all reports filed on and after such date; provided, however, that if Code Section

45-12-92.1 as enacted by HB 1055 at the regular session of the 2010 General Assembly does not become law, then the following provisions as enacted by this Act shall not become effective and shall be reserved instead: paragraph (2) of subsection (k) of Code Section 21-5-34; paragraph (2) of subsection (f) of Code Section 21-5-50; division (f)(2)(D)(ii) of Code Section 21-5-71; and division (f)(2)(E)(ii) of Code Section 21-5-71." HB 1055 became effective May 12, 2010.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

## 21-5-51. Inspection and copying of financial disclosure statements.

Financial disclosure statements filed pursuant to this article shall be public records and shall be subject to inspection and copying by any member of the public as provided by law for other public records. (Code 1981, § 21-5-51, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 15; Ga. L. 2009, p. 620, § 6/SB 168; Ga. L. 2010, p. 1173, § 17/SB 17.)

**The 2009 amendment**, effective May 4, 2009, added "unless filed electronically in which case the electronic filing shall constitute an affirmation that the statement is true, complete, and correct" at the end of this Code section.

**The 2010 amendment**, effective January 10, 2011, substituted the present provisions of this Code section for the former provisions, which read: "The financial disclosure statements required under this article shall be verified by oath or affirmation of the public officer filing the statement, such oath or affirmation to be taken before an officer authorized to administer oaths, unless filed electronically in which

case the electronic filing shall constitute an affirmation that the statement is true, complete, and correct." See the editor's note for applicability.

**Editor's notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Government Transparency and Campaign Finance Act of 2010.'"

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

## 21-5-52. Filing by mail.

Repealed by Ga. L. 2010, p. 1173, § 18/SB 17, effective January 10, 2011.

**Editor’s notes.** — This Code section was based on Code 1981, § 21-5-52, enacted by Ga. L. 1986, p. 957, § 1; Ga. L. 1987, p. 297, § 16; Ga. L. 2005, p. 859, § 19/HB 48; Ga. L. 2009, p. 620, § 6/SB 168.

Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act

shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the repeal of this Code section applies to all reports filed on and after January 10, 2011.

**21-5-53. Public record.**

Repealed by Ga. L. 2010, p. 1173, § 19/SB 17, effective January 10, 2011.

**Editor’s notes.** — This Code section was based on Code 1981, § 21-5-53, enacted by Ga. L. 1986, p. 957, § 1; Ga. L.

1987, p. 297, § 17; Ga. L. 1988, p. 603, § 7.

ARTICLE 4

PUBLIC OFFICIALS’ CONDUCT AND LOBBYIST DISCLOSURE

**21-5-70. Definitions.**

As used in this article, the term:

(1) “Expenditure”:

(A) Means a purchase, payment, distribution, loan, advance, deposit, or conveyance of money or anything of value made for the purpose of influencing the actions of any public officer, specifically including any such transaction which is made on behalf of or for the benefit of a public employee for the purpose of influencing a public officer;

(B) Includes any other form of payment when such can be reasonably construed as designed to encourage or influence a public officer;

(B.1) Includes reimbursement or payment of actual and reasonable expenses provided to a public officer for transportation, travel, lodging, registration, food, beverages, and other activities related to attending a meeting or conference so as to permit such public officer’s participation in such meeting or conference;

(C) Includes any gratuitous transfer, payment, subscription, advance, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received;

(D) Notwithstanding division (x) of subparagraph (E) of this paragraph, includes food or beverage consumed at a single meal or event by a public officer or public employee or a member of the family of such public officer or public employee; and



(E) The term shall not include:

(i) The value of personal services performed by persons who serve voluntarily without compensation from any source;

(ii) A gift received from a member of the public officer's family;

(iii) Legal compensation or expense reimbursement provided to public employees and to public officers in the performance of their duties;

(iv) Promotional items generally distributed to the general public or to public officers and food and beverages produced in Georgia;

(v) An award, plaque, certificate, memento, or similar item given in recognition of the recipient's civic, charitable, political, professional, or public service;

(vi) Legitimate salary, benefits, fees, commissions, or expenses associated with a recipient's nonpublic business, employment, trade, or profession;

(vii) Food, beverages, and registration at group events to which all members of an agency, as defined in paragraph (1) of subsection (a) of Code Section 21-5-30.2, are invited. An agency shall include the Georgia House of Representatives, the Georgia Senate, committees and subcommittees of such bodies, and the governing body of each political subdivision of this state;

(viii) Campaign contributions or expenditures reported as required by Article 2 of this chapter;

(ix) A commercially reasonable loan made in the ordinary course of business;

(x) Food, beverage, or expenses afforded public officers, members of their immediate families, or others that are associated with normal and customary business or social functions or activities; or

(xi) Transportation unless a lobbyist arranges for or participates in such transportation.

(2) "Filed" means the delivery to the commission, as specified in this article, of a document that satisfies the requirements of this article. A document is considered delivered when it is electronically delivered to the commission or placed in the United States mail within the required filing time, properly addressed to the commission, as specified in this article, with adequate postage affixed.

(3) "Identifiable group of public officers" means a description that is specifically determinable by available public records.

(4) "Lobbying" means the activity of a lobbyist while acting in that capacity.

(5) "Lobbyist" means, subject to the qualifications at the end of this paragraph:

(A) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose the passage of any legislation by the General Assembly, or any committee thereof, or the approval or veto of legislation by the Governor;

(B) Any natural person who makes a total expenditure of more than \$1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose the passage of any legislation by the General Assembly, or any committee thereof, or the approval or veto of legislation by the Governor;

(C) Any natural person who as an employee of the executive branch or judicial branch of state government engages in any activity covered under subparagraph (A) of this paragraph;

(D) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose the passage of any ordinance or resolution by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;

(E) Any natural person who makes a total expenditure of more than \$1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose the passage of any ordinance or resolution by a public officer specified under subparagraph (F) or (G) of paragraph (22) of Code Section 21-5-3, or any committee of such public officers, or the approval or veto of any such ordinance or resolution;

(F) Any natural person who as an employee of the executive branch or judicial branch of local government engages in any activity covered under subparagraph (D) of this paragraph;

(G) Any natural person who, for compensation, either individually or as an employee of another person, is hired specifically to undertake influencing a public officer or state agency in the selection of a vendor to supply any goods or services to any state agency but does not include any employee or independent contractor of the vendor solely on the basis that such employee or independent contractor participates in soliciting a bid or in prepar-

ing a written bid, written proposal, or other document relating to a potential sale to a state agency and shall not include a bona fide salesperson who sells to or contracts with a state agency for goods or services and who does not otherwise engage in activities described in subparagraphs (A) through (F) or (H) through (J) of this paragraph;

(H) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose the passage of any rule or regulation of any state agency;

(I) Any natural person who, either individually or as an employee of another person, is compensated specifically for undertaking to promote or oppose any matter before the State Transportation Board; or

(J) Any natural person who makes a total expenditure of more than \$1,000.00 in a calendar year, not including the person's own travel, food, lodging expenses, or informational material, to promote or oppose any matter before the State Transportation Board.

The provisions of subparagraphs (A), (C), (D), (F), (G), (H), and (I) of this paragraph shall apply only where the person in question spends more than 10 percent of his or her working hours engaged in the activities described in one or more of those subparagraphs. In the case of a person who is employed by a single employer, the 10 percent test shall be applied to all time worked for that employer. In the case of a person who is employed by more than one employer or retained by more than one client, the 10 percent test shall be applied separately with respect to time spent working for each employer and each client. A person who spends less than 10 percent of his or her time working for an employer or client engaged in such activities shall not be required to register as or be subject to regulation as a lobbyist for that employer or client. In applying the 10 percent test, time spent in planning, researching, or preparing for activities described in subparagraphs (A), (C), (D), (F), (G), (H), and (I) of this paragraph shall be counted as time engaged in such activities. When registration is required, the time of registration shall be as provided in Code Section 21-5-71.

(6) "Public officer" means a member of the State Transportation Board and those public officers specified under paragraph (22) of Code Section 21-5-3, except as otherwise provided in this article and also includes any public officer or employee who has any discretionary authority over, or is a member of a public body which has any discretionary authority over, the selection of a vendor to supply any goods or services to any state agency.



(7) “State agency” means any branch of state government or any agency, authority, department, board, bureau, commission, council, corporation, entity, or instrumentality of this state or of a local political subdivision of this state.

(8) “Vendor” means any person who sells to or contracts with any state agency for the provision of any goods or services. (Code 1981, § 21-5-70, enacted by Ga. L. 1992, p. 1075, § 16; Ga. L. 1994, p. 258, § 13; Ga. L. 1994, p. 277, § 1; Ga. L. 1996, p. 26, § 1; Ga. L. 2005, p. 859, § 20/HB 48; Ga. L. 2008, p. 261, § 1/SB 456; Ga. L. 2009, p. 41, § 1/SB 47; Ga. L. 2010, p. 1173, § 20/SB 17; Ga. L. 2011, p. 19, § 7/HB 232; Ga. L. 2011, p. 569, § 3/SB 160.)

**The 2009 amendment**, effective April 21, 2009, part of an Act to revise, modernize, and correct this title, revised language in subparagraph (5)(G).

**The 2010 amendment**, effective January 10, 2011, added subparagraph (1)(B.1); in subparagraph (1)(E), deleted “or” at the end of division (1)(E)(ix), added “; or” at the end of division (1)(E)(x), and added division (1)(E)(xi); inserted a comma following “material” in subparagraphs (5)(B) and (5)(E); deleted “or” at the end of subparagraph (5)(G); substituted a semicolon for a period at the end of subparagraph (5)(H); and added subparagraphs (5)(I) and (5)(J); inserted “a member of the State Transportation Board and” near the beginning of paragraph (6); and substituted the present provisions of paragraph (7) for the former, which read: “‘State agency’ means any branch of state government, agency, authority, department, board, bureau, commission, council, corporation, entity, or instrumentality of the state but does not include a local political subdivision, such as a county, city, or local school district or an instrumentality of such a local political subdivision.”

**The 2011 amendments.** — The first 2011 amendment, effective March 15, 2011, in paragraph (5), added “subject to the qualifications at the end of this paragraph” at the end of the introductory paragraph; in subparagraphs (5)(A), (5)(D), (5)(H), and (5)(I), deleted “for compensation” following “person who”, and substituted “is compensated specifically for undertaking” for “undertakes”; in subparagraphs (5)(B), (5)(E), and (5)(J),

substituted “\$1,000.00” for “\$250.00”; in subparagraph (5)(G), inserted a comma following “person” near the beginning, inserted “or independent contractor” twice in the middle, and added “and shall not include a bona fide salesperson who sells to or contracts with a state agency for goods or services and who does not otherwise engage in activities described in subparagraphs (A) through (F) or (H) through (J) of this paragraph” at the end; in subparagraph (5)(H), substituted “is compensated specifically for undertaking” for “is hired specifically to undertake”; in subparagraph (5)(I), substituted “person, is compensated specifically for undertaking” for “person undertakes”; and added the ending undesignated paragraph following subparagraph (5)(J). The second 2011 amendment, effective May 12, 2011, substituted “public officer, specifically including any such transaction which is made on behalf of or for the benefit of a public employee for the purpose of influencing a public officer” for “public officer or public employee” in paragraph (1)(A).

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: “This Act shall become effective upon its approval

by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively." This Act became effective March 15, 2011.

**21-5-71. Registration required; application for registration; supplemental registration; expiration; docket; fees; identification cards; public rosters; exemptions.**

(a)(1) Subject to paragraphs (2) and (3) of this subsection, no person shall engage in lobbying as defined by this article unless such person is registered with the commission as a lobbyist. The commission shall not allow a person who has been convicted of a felony involving moral turpitude in the courts of this state or an offense that, had it occurred in this state, would constitute a felony involving moral turpitude under the laws of this state to become a registered lobbyist unless ten years or more have elapsed since the completion of the person's sentence. The administration of this article is vested in the commission.

(2) When a person is hired or retained as an employee or agent or independent contractor and under the agreement of the parties the primary duties, or a substantial part of the duties, of the person will involve lobbying activities, the person shall register as a lobbyist before commencing lobbying activities.

(3) When paragraph (2) does not apply there shall be a lookback period of each calendar month for determining whether the 10 percent test of paragraph (5) of Code Section 21-5-70 has been met. If at the end of any month the 10 percent test has been met during that month, the person shall register as a lobbyist within five days after the last day of that month and shall in his or her initial disclosure report include all prior lobbying expenditures in that calendar year.

(b) Each lobbyist shall file an application for registration with the commission. The application shall be verified by the applicant and shall contain:

(1) The applicant's name, address, and telephone number;

(2) The name, address, and telephone number of the person or agency that employs, appoints, or authorizes the applicant to lobby on its behalf;

(3) A statement of the general business or purpose of each person, firm, corporation, association, or agency the applicant represents;

(4) If the applicant represents a membership group other than an agency or corporation, the general purpose and approximate number of members of the organization;

(5) A statement signed by the person or agency employing, appointing, or authorizing the applicant to lobby on its behalf;

(6) If the applicant is a lobbyist within the meaning of subparagraph (G) or (H) of paragraph (5) of Code Section 21-5-70, the name of the state agency or agencies before which the applicant engages in lobbying;

(7) A statement disclosing each individual or entity on whose behalf the applicant is registering if such individual or entity has agreed to pay him or her an amount exceeding \$10,000.00 in a calendar year for lobbying activities; and

(8) A statement verifying that the applicant has not been convicted of a felony involving moral turpitude in the courts of this state or an offense that, had it occurred in this state, would constitute a felony involving moral turpitude under the laws of this state or, if the applicant has been so convicted, a statement identifying such conviction, the date thereof, a copy of the person's sentence, and a statement that more than ten years have elapsed since the completion of his or her sentence.

(c) The lobbyist shall, within seven days of any substantial or material change or addition, file a supplemental registration indicating such substantial or material change or addition to the registration prior to its expiration. Previously filed information may be incorporated by reference. Substantial or material changes or additions shall include, but are not limited to, the pertinent information concerning changes or additions to client and employment information required by paragraphs (2), (3), (4), (6), and (7) and conviction status required by paragraph (8) of subsection (b) of this Code section.

(d) Each registration under this Code section shall expire on December 31 of each year. The commission may establish renewal procedures for those applicants desiring continuous registrations. Previously filed information may be incorporated by reference.

(e) The commission shall provide a suitable public docket for registration under this Code section with appropriate indices and shall enter promptly therein the names of the lobbyists and the organizations they represent.

(f)(1) Each person registering under this Code section shall pay the registration fees set forth in paragraph (2) of this subsection; provided, however, that a person who represents any state, county, municipal, or public agency, department, commission, or authority shall be exempted from payment of such registration fees.

(2) The commission shall collect the following fees:

- (A) Annual lobbyist registration or renewal filed pursuant to this Code section ..... \$ 300.00



(B) Lobbyist supplemental registration filed pursuant to this Code section .....	10.00
(C) Each copy of a lobbyist identification card issued pursuant to this Code section .....	20.00

(D)(i) For reports filed when the General Assembly is not in session, in addition to other penalties provided under this chapter, a late fee of \$275.00 shall be imposed for each report that is filed late. In addition, a late fee of \$1,000.00 shall be imposed on the fifteenth day after the due date for such report if the report has not been filed. A late fee of \$10,000.00 shall be imposed on the forty-fifth day after the due date for such report if the report has not been filed.

(ii) The commission shall retain \$25.00 of the first late fee received for processing pursuant to the provisions of Code Section 45-12-92.1.

(E)(i) For reports filed when the General Assembly is in session, in addition to other penalties provided under this chapter, a late fee of \$275.00 shall be imposed for each report that is filed late. In addition, a late fee of \$1,000.00 shall be imposed on the seventh day after the due date for such report if the report has not been filed. A late fee of \$10,000.00 shall be imposed on the twenty-first day after the due date for such report if the report has not been filed.

(ii) The commission shall retain \$25.00 of the first late fee received for processing pursuant to the provisions of Code Section 45-12-92.1.

(g) As soon as practicable after registering any such person, the commission shall issue to such person an identification card which shall have printed thereon the name of the lobbyist, a color photograph of the lobbyist, and the person or agency such lobbyist represents, provided that, when any such person represents more than one entity, such identification card shall have printed thereon the name of the registered person and the word "LOBBYIST." Each lobbyist while engaged in lobbying at the capitol or in a government facility shall display said identification in a readily visible manner.

(h) The commission shall regularly publish in print or electronically public rosters of lobbyists along with the respective persons, firms, corporations, associations, agencies, or governmental entities they represent. During sessions of the General Assembly, the commission shall weekly report to the Clerk of the House of Representatives, the

Secretary of the Senate, and the Governor those persons who have registered as lobbyists since the convening of the General Assembly. The commission shall be authorized to charge a reasonable fee for providing copies of the roster to the public.

(i) The registration provisions of this Code section shall not apply to:

(1) Any individual who expresses personal views, on that individual's own behalf, to any public officer;

(2) Any person who appears before a public agency or governmental entity committee or hearing for the purpose of giving testimony when such person is not otherwise required to comply with the registration provisions of this Code section;

(3) Any public employee of an agency appearing before a governmental entity committee or hearing at the request of the governmental entity or any person who furnishes information upon the specific request of a governmental entity;

(4) Any licensed attorney appearing on behalf of a client in any adversarial proceeding before an agency of this state or any political subdivision of this state;

(5) Any person employed or appointed by a lobbyist registered pursuant to this Code section whose duties and activities do not include lobbying;

(6) Elected public officers performing the official duties of their public office; and

(7) Any public employee who performs services at the direction of a member of the General Assembly including, but not limited to, drafting petitions, bills, or resolutions; attending the taking of testimony; collating facts; preparing arguments and memorials and submitting them orally or in writing to a committee or member of the General Assembly; and other services of like character intended to reach the reason of the legislators. (Code 1981, § 21-5-71, enacted by Ga. L. 1992, p. 1075, § 16; Ga. L. 1994, p. 258, § 14; Ga. L. 2005, p. 859, § 21/HB 48; Ga. L. 2010, p. 9, § 1-49/HB 1055; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2010, p. 1173, § 21/SB 17; Ga. L. 2011, p. 19, § 8/HB 232.)

**The 2010 amendments.** — The first 2010 amendment, effective May 12, 2010, deleted “and a person employed by an organization exempt from federal income taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2, shall be exempted from payment of such registration fees except for payment

of an initial registration fee of \$25.00” at the end of subparagraph (f)(1); inserted “renewal” and substituted “300.00” for “200.00” in subparagraph (f)(2)(A); and inserted “copy of a” and substituted “20.00” for “5.00” in subparagraph (f)(2)(C). The second 2010 amendment, effective June 3, 2010, inserted “in print or electronically” in the first sentence of

subsection (h). The third 2010 amendment, effective January 10, 2011, added the second sentence in subsection (a); in subsection (b), deleted “and” at the end of paragraph (b)(6), added “; and” at the end of paragraph (b)(7), and added paragraph (b)(8); inserted “and conviction status required by paragraph (8)” in the last sentence of subsection (c); deleted “and a person employed by an organization exempt from federal income taxation under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, as that code is defined in Code Section 48-1-2, shall be exempted from payment of such registration fees except for payment of an initial registration fee of \$25.00” at the end of paragraph (f)(1); substituted “300.00” for “200.00” in subparagraph (f)(2)(A); and “20.00” for “5.00” in subparagraph (f)(2)(C); substituted the present provisions of subparagraph (f)(2)(D) for the former provisions, which read: “In addition to other penalties provided under this chapter, a filing fee of \$50.00 shall be imposed for each report that is filed late. In addition, a filing fee of \$25.00 shall be imposed on the fifteenth day after the due date if the report has still not been filed.”; added subparagraph (f)(2)(E); and added “or any political subdivision of this state” at the end of paragraph (i)(4). See the Code Commission note regarding the effect of these amendments. See the editor’s note for applicability.

**The 2011 amendment**, effective March 15, 2011, designated the existing provisions of subsection (a) as paragraph (a)(1), and, at the beginning of paragraph (a)(1), substituted “Subject to paragraphs (2) and (3) of this subsection, no” for “No”

at the beginning; and added paragraphs (a)(2) and (a)(3).

**Code Commission notes.** — The amendments to subparagraphs (f)(2)(D) and (f)(2)(E) of this Code section by Ga. L. 2010, p. 9, § 1-49, irreconcilably conflicted with and were treated as superseded by Ga. L. 2010, p. 1173, § 21. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 304, not codified by the General Assembly, provides: “This Act shall become effective on January 10, 2011, and shall apply to all reports filed on and after such date; provided, however, that if Code Section 45-12-92.1 as enacted by HB 1055 at the regular session of the 2010 General Assembly does not become law, then the following provisions as enacted by this Act shall not become effective and shall be reserved instead: paragraph (2) of subsection (k) of Code Section 21-5-34; paragraph (2) of subsection (f) of Code Section 21-5-50; division (f)(2)(D)(ii) of Code Section 21-5-71; and division (f)(2)(E)(ii) of Code Section 21-5-71.” HB 1055 became effective May 12, 2010.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively.” This Act became effective March 15, 2011.

## RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state and municipal enact-

ments regulating lobbying and of lobbying contracts, 35 ALR6th 1.



**21-5-72. Denial, suspension, or revocation of registration; reinstatement; civil penalty.**

**RESEARCH REFERENCES**

**ALR.** — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts, 35 ALR6th 1.

**21-5-73. Disclosure reports.**

(a) Each lobbyist registered under this article shall file disclosure reports as provided for in this Code section in the electronic format specified by the commission.

(b) A person who is a lobbyist pursuant to subparagraph (A), (B), or (C) of paragraph (5) of Code Section 21-5-70 shall file a semimonthly disclosure report on the first and fifteenth day of each month, current through the end of the preceding report, beginning January 15 and continuing throughout the period that the General Assembly is in session.

(c) A person who is a lobbyist pursuant to subparagraph (D) or (E) of paragraph (5) of Code Section 21-5-70 shall:

(1) File a disclosure report, current through the end of the preceding month, on or before the fifth day of May, September, and January of each year instead of the reports required by subsections (b) and (d) of this Code section; and

(2) File such report with the commission, file a copy of such report with the election superintendent of each county involved if the report contains any expenditures relating to county or county school district affairs, and file a copy of such report with the municipal clerk (or if there is no municipal clerk, with the chief executive officer of the municipality) of each municipality involved if the report contains any expenditures relating to municipal affairs or independent school district affairs.

(d) A person who is a lobbyist pursuant to subparagraph (A), (B), (C), (F), (G), (H), (I), or (J) of paragraph (5) of Code Section 21-5-70 shall file a monthly disclosure report, current through the end of the preceding period, on or before the fifth day of each month; provided, however, that such monthly reports shall not be filed during any period that the lobbyist files a semimonthly report pursuant to subsection (b) of this Code section.

(e) Reports filed by lobbyists shall be verified and shall include:

(1) A description of all expenditures, as defined in Code Section 21-5-70, or the value thereof made on behalf of or for the benefit of a

public officer or on behalf of or for the benefit of a public employee for the purpose of influencing a public officer by the lobbyist or employees of the lobbyist or by any person on whose behalf the lobbyist is registered if the lobbyist has actual knowledge of such expenditure. The description of each reported expenditure shall include:

(A) The name and title of the public officer or public employee or, if the expenditure is simultaneously incurred for an identifiable group of public officers or public employees the individual identification of whom would be impractical, a general description of that identifiable group;

(B) The amount, date, and description of the expenditure and a summary of all spending classified by category. Such categories shall include gifts, meals, entertainment, lodging, equipment, advertising, travel, and postage;

(C) The provisions of Code Section 21-5-70 notwithstanding, aggregate expenditures described in divisions (1)(E)(vii) and (1)(E)(x) of Code Section 21-5-70 incurred during the reporting period; provided, however, expenses for travel and for food, beverage, and lodging in connection therewith afforded a public officer or public employee shall be reported in the same manner as under subparagraphs (A), (B), and (D) of this paragraph;

(D) If applicable, the number of the bill, resolution, ordinance, or regulation pending before the governmental entity in support of or opposition to which the expenditure was made; and

(E) If applicable, the rule or regulation number or description of the rule or regulation pending before the state agency in support of or opposition to which the expenditure was made;

(2) For those who are lobbyists within the meaning of subparagraph (G) of paragraph (5) of Code Section 21-5-70, the name of any vendor or vendors for which the lobbyist undertook to influence the awarding of a contract or contracts by any state agency together with a description of the contract or contracts and the monetary amount of the contract or contracts; and

(3) For those who are lobbyists within the meaning of subparagraph (H) of paragraph (5) of Code Section 21-5-70, the name of the individual or entity for which the lobbyist undertook to influence the rule or regulation of a state agency.

(f) The reports required by this article shall be in addition to any reports required under Code Section 45-1-6, relating to required reports by state vendors of gifts to public employees. Compliance with this Code section shall not excuse noncompliance with that Code section, and compliance with that Code section shall not excuse noncompliance with

this Code section, notwithstanding the fact that in some cases the same information may be required to be disclosed under both Code sections.

(g) The electronic filing of any disclosure report required by this article shall constitute an affirmation that such report is true, complete, and correct.

(h) The commission shall not require the reporting of any more information in a lobbyist disclosure report than is expressly required to be disclosed by this Code section.

(i) All lobbyists shall have a grace period of three business days in filing all disclosure reports. (Code 1981, § 21-5-73, enacted by Ga. L. 1992, p. 1075, § 16; Ga. L. 1994, p. 258, §§ 15, 16; Ga. L. 2005, p. 859, § 22/HB 48; Ga. L. 2010, p. 1173, § 22/SB 17; Ga. L. 2011, p. 19, § 9/HB 232; Ga. L. 2011, p. 569, § 4/SB 160.)

**The 2010 amendment**, effective January 10, 2011, added “in the electronic format specified by the commission” in subsection (a); substituted the present provisions of subsection (b) for the former provisions, which read: “A person who is a lobbyist pursuant to subparagraph (A), (B), or (C) of paragraph (5) of Code Section 21-5-70 shall file a monthly disclosure report, current through the end of the preceding month, on or before the fifth day of any month while the General Assembly is in session.”; substituted the present provisions of subsection (d) for the former provisions, which read: “A person who is a lobbyist pursuant to subparagraph (A), (B), (C), (F), (G), or (H) of paragraph (5) of Code Section 21-5-70 shall file a disclosure report, current through the end of the period ending on July 31 and December 31 of each year, on or before August 5 and January 5 of each year.”; in paragraph (e)(1), in the first sentence, inserted “on behalf or for the benefit of a public officer”, and substituted “or by any person on whose behalf the lobbyist is registered if the lobbyist has actual knowledge of such expenditure” for “on behalf or for the benefit of a public officer”; and added subsections (g) and (h). See the editor’s note for applicability.

**The 2011 amendments.** — The first

2011 amendment, effective March 15, 2011, added subsection (i). The second 2011 amendment, effective May 12, 2011, in paragraph (e)(1), inserted “of” and inserted “or on behalf of or for the benefit of a public employee for the purpose of influencing a public officer” in the first sentence; in subparagraph (e)(1)(A), inserted “or public employee” and “or public employees”; and, in subparagraph (e)(1)(C), inserted “or public employee” near the end.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

Ga. L. 2011, p. 19, § 10, not codified by the General Assembly, provides: “This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. It is the express intention of the General Assembly that this Act be applied retroactively to January 10, 2011, as well as prospectively.” This Act became effective March 15, 2011.



RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts, 35 ALR6th 1.

**21-5-74. Postemployment restrictions on lobbyists.**

RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts, 35 ALR6th 1.

**21-5-75. Postemployment restrictions on public officers.**

RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts, 35 ALR6th 1.

**21-5-76. Contingent fees for lobbying prohibited; unauthorized persons on the floor while the General Assembly is in session.**

(a) No person, firm, corporation, or association shall retain or employ a lobbyist for compensation contingent, in whole or in part, upon the passage or defeat of any legislative measure, upon the adoption or decision not to adopt any state agency rule or regulation, or upon the granting or awarding of any state contract. No lobbyist shall be employed for compensation contingent, in whole or in part, upon the passage or defeat of any legislation, upon the adoption or decision not to adopt any state agency rule or regulation, or upon the granting or awarding of any state contract.

(b) It shall be unlawful for any person registered pursuant to the requirements of this article or for any other person, except as authorized by the rules of the House of Representatives or Senate, to be on the floor of either chamber of the General Assembly while the same is in session. (Code 1981, § 21-5-76, enacted by Ga. L. 2005, p. 859, § 23/HB 48; Ga. L. 2010, p. 1173, § 23/SB 17.)

**The 2010 amendment**, effective January 10, 2011, rewrote subsection (a). See the editor’s note for applicability.

**Editor’s notes.** — Ga. L. 2010, p. 1173, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Government

Transparency and Campaign Finance Act of 2010.’”

Ga. L. 2010, p. 1173, § 30, not codified by the General Assembly, provides, in part, that the amendment to this Code section applies to all reports filed on and after January 10, 2011.

RESEARCH REFERENCES

**ALR.** — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts, 35 ALR6th 1.







